TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1191.

THE WILSON PACKING COMPANY, ARTHUR A. LIBBY, ARCHIBALD McNEILL, AND CHARLES P. LIBBY, APPELLANTS,

vs.

ROBERT D. HUNTER, H. B. MERRILL, HENRY L. NEWMAN, AND THE SAINT LOUIS BEEF CANNING COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED JANUARY 11, 1882.

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1 *Placita.*

Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the honorable Thomas Drummond, judge of the seventh judicial circuit, on Tuesday, the 6th day of December, at the June term of said court, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the said United States the one hundred and sixth year.

J. A. JONES, *Clerk.*

THE WILSON PACKING COMPANY, ARTHUR A. Libby, Archibald McNeil, and Charles P. Libby,
vs.
ROBERT D. HUNTER, H. B. MERRILL, HENRY L. Newman, and The St. Louis Beef Canning Company.
} No. 5102. In chancery.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

2 The Wilson Packing Company, a corporation existing under and by virtue of the laws of the State of Illinois, and Arthur A. Libby, Archibald McNeil, and Charles P. Libby, citizens of the State of Illinois, complainants, by Goodwin, Offield and Towle, their solicitors, bring this their bill against Robert D. Hunter, H. B. Merrill, Henry L. Newman, and The St. Louis Beef Canning Company, citizens of the State of Missouri, defendants, who put in their place Messrs. Noble and Orrick and Bluford Wilson, their solicitors, at the suit of complainants in the bill aforesaid.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the 16th day of June, in the year of our Lord one thousand eight hundred and seventy seven, came the complainants, by their solicitors, and filed in the office of the clerk of said court their cost bond and bill in said cause, which are in the words and figures following, to wit:

Cost bond.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

3 Circuit court.—Term, A. D. 1877.

WILSON PACKING COMPANY ET AL.
vs.
ROBERT D. HUNTER, H. B. MERRILL, HENRY L. Newman.
} In chancery.

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and in default of payment by the complainants of any costs ordered or adjudged to be paid by them, hereby agree and stipulate that execution may issue against my property for any costs taxed against them.

Dated this 15th day of June, A. D. 1877.

J. A. WILSON.

(Endorsed:) Filed June 16, A. D. 1877. J. A. Jones, clerk.

REC. 1191—1

Bill.

United States circuit court, southern district of Illinois.

To the honorable the judges of the circuit court of the United
4 States for the southern district of Illinois, in chancery sitting:

The Wilson Packing Company, a corporation organized under and by virtue of the laws of the State of Illinois, and having their principal place of business at Chicago, and Arthur A. Libby, Archibald McNiel, and Charles P. Libby, of Chicago, in the State of Illinois, and citizens of said State, bring this their bill of complaint against Robert D. Hunter, H. B. Merrill, and Henry L. Newman, of St. Louis, in the State of Missouri, and The St. Louis Beef Canning Company, a corporation existing under and by virtue of the laws of the State of Missouri, and having their principal place of business at St. Louis, in said State, citizens of said State.

And thereupon your orators complain and say, that before the thirty-first day of March, eighteen hundred and seventy-four, William J. Wilson was the true, original, and first inventor of a certain new and useful improvement in process for preserving & packing cooked meats, not known or used by others before his said invention thereof, and which had not, at the time of his application for a patent thereof,
5 been in public use or on sale, with his consent or allowance, for more than two years prior to his application for a patent therefor, as your orators verily believe.

And your orators further show unto your honors that the said William J. Wilson, so being the inventor of said improvement, and being a citizen of the United States aforesaid, made application to the proper department of the Government of the United States for letters patent therefor, in accordance with the then existing laws of Congress, and he having duly complied in all respects with the conditions and requisitions of said laws, such proceedings were had that on the thirty-first day of March, eighteen hundred and seventy-four, letters patent of the United States for the said improvement and invention, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents, and bearing date the day and year last aforesand, were issued in due form of law and delivered to the said William J. Wilson, whereby was granted and secured to him, and his heirs or assigns, for the term of seventeen years from the day of the date thereof, the full and exclusive
6 right of making, using, and vending to others to be used, the said improvement and invention, a description whereof is given in the words of the said inventor in a schedule in writing, duly annexed to said letters patent when the same were issued, and made a part thereof, as by the said original letters patent, or a duly-authenticated copy thereof, in court to be produced, will fully appear.

And your orators further show unto your honors that by a mesne assignment in writing from and under the said William J. Wilson, duly recorded in the Patent Office, at Washington, your orators, the said Wilson Packing Company, became vested with all the exclusive rights and privileges and with all the interest granted in and by said above-mentioned original letters patent issued to said William J. Wilson.

And your orators further show unto your honors that afterwards the said William J. Wilson (your orators, the said Wilson Packing Company, consenting), for good and lawful cause, surrendered said last-mentioned original letters patent to the Commissioner of Patents,

7 and made application for a new patent to be issued for the same invention, and accompanied such application with a corrected description and specification, and with the requisite drawings, and in all respects complied with the acts of Congress, in such case made and provided; whereupon, on the sixth day of April, eighteen hundred and seventy-five, new letters patent for the same invention last mentioned were, in accordance with law, duly granted, issued, and delivered to your orators, the Wilson Packing Company, assignee of the said William J. Wilson, for the residue of said term of seventeen years; that said last-mentioned letters patent were issued in accordance with and in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents, and bear date the day and year last aforesaid, and were numbered and designated as Reissue No. 6370; and there was, by said last-mentioned reissued letters patent, secured to your said orators, the Wilson Packing Company, their successors or assigns, for the term of seventeen years from the thirty-first day of March, eighteen hundred and seventy-four, the full and exclusive

8 right of making, using, and vending to others to be used, the said original improvement and invention patented to the said William J. Wilson, and that a legal corrected description and specification of the said original improvement and invention contained in said reissued letters patent is given in the words of the said William J. Wilson, in a certain schedule, accompanied by drawings and written references thereto, which was in due form of law annexed to said reissued letters patent at the time the same were issued, and made a part thereof, as by the said last-mentioned reissued letters patent, or a duly-authenticated copy thereof, ready to be produced, as the court shall direct, will fully appear.

And your orators further complain and say that before the twelfth day of July, eighteen hundred and sixty-four, William C. Marshall was the true, original, and first inventor of a certain new and useful improvement in process for preserving meats not known or used by others before his said invention thereof, and which had not, at the time of his application for a patent therefor, been in public use or on sale

9 with his consent or allowance for more than two years prior to his application for a patent therefor, as your orators verily believe.

And your orators further show unto your honors that the said William C. Marshall, so being the inventor of said improvement, and being a citizen of the United States aforesaid, made application to the proper department of the Government of the United States for letters patent therefor, in accordance with the then existing laws of Congress, and he having duly complied in all respects with the conditions and requisitions of said laws, such proceedings were had, that on the twelfth day of July, eighteen hundred and sixty-four, letters patent of the United States for the said improvement and invention, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior, and countersigned by the Commissioner of Patents, and bearing date the day and year last aforesaid, were issued in due form of law and delivered to the said William C. Marshall, whereby was granted and secured to him, and his heirs, executors, administrators, or assigns, for the term of seventeen years from the day of the date thereof,

10 the full and exclusive right of making, using, and vending to others to be used, said improvement and invention, a description whereof is given in the words of the said inventor in a schedule in writ

ing, accompanied by drawings and references thereto, duly annexed to said letters patent when the same were issued, and made a part thereof, as by the said original letters patent, or a duly authenticated copy thereof, to be produced in court, will fully appear.

And your orators further show unto your honors that by a mesne assignment in writing, from and under the said William C. Marshall, duly recorded in the Patent Office at Washington, your orator Arthur A. Libby became invested with all the exclusive rights and privileges, and with all the interests granted in and by the said last above-mentioned original letters patent to said William C. Marshall.

And your orators further show unto your honors that afterwards the said William C. Marshall your said orator Arthur A. Libby consenting, for good and lawful cause, surrendered said last-mentioned letters patent to the Commissioner of Patents, and duly made application for a new patent to be issued for the same invention, and
11 accompanied such application with a corrected description and specification, and with the requisite drawings, and in all respects complied with the acts of Congress in such case made and provided; whereupon, on the twenty-fifth day of May, eighteen hundred and seventy-five, new letters patent for the same invention last mentioned were, in accordance with law, duly granted, issued, and delivered to your said orator, Arthur A. Libby, assignee of the said William C. Marshall, for the residue of said term of seventeen years; that said last-mentioned letters patent were so issued in accordance with and in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior, and countersigned by the Commissioner of Patents, and bear date the day and year last aforesaid, and were numbered and designated as Reissue No. 6541, and that there was, by said last-mentioned reissued letters patent, secured to your said orator Arthur A. Libby, heirs, or assigns, for the term of seventeen years from the twelfth day of July, eighteen hundred and sixty-four, the full and exclusive right of making, using, and vending to oth-
12 ers to be used, the said original improvement and invention; that a legal corrected description and specification of said original improvement and invention contained in said reissued letters patent is given in the words of the said William C. Marshall in a certain schedule, accompanied by drawings and written references thereto, which was, in due form of law, annexed to said reissued letters patent at the time the same were issued, and made a part thereof, as by the said last-mentioned reissued letters patent, or a duly authenticated copy thereof, ready to be produced, as the court shall direct, will fully appear.

And your orators further complain and say that before the sixth day of April, eighteen hundred and seventy-five, John A. Wilson was the true, original, and first inventor of a certain new and useful improvement in sheet-metal cans, not known or used by others before his said invention thereof, and which had not, at the time of his application for a patent therefor, been in public use or on sale with his consent or allowance for more than two years prior to his application for a patent therefor, as your orators verily believe.

And your orators further show unto your honors that the said
13 John A. Wilson, so being the inventor of said improvement, and being a citizen of the United States aforesaid, made application to the proper department of the Government of the United States for letters patent therefor, in accordance with the then existing laws of Congress, and he having duly complied in all respects with the conditions and requisitions of said laws, such proceedings were had that on

the day of , eighteen hundred and , letters patent of the United States for the said improvement and invention, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior, and countersigned by the Commissioner of Patents, and bearing date the day and year last aforesaid, were issued in due form of law and delivered to the said John A. Wilson, and numbered *No.* 161848, whereby was granted and secured to him, and his heirs or assigns, for the term of years from the day of the date thereof, the full and exclusive right of making, using, and vending to others to be used, the said improvement and invention, a description whereof is given in the words of the said inventor, in a schedule in writing, accompanied by drawings and references thereto, duly annexed to said letters
14 patent when the same were issued, and made a part thereof, as by the said original letters patent, or a duly authenticated copy thereof, ready in court to be produced, will fully appear.

And your orators further show unto your honors that by a mesne assignment in writing, from and under the said John A. Wilson, duly recorded in the Patent Office, your orator the said Wilson Packing Company became vested with all the exclusive rights and privileges and with all the interest granted in and by the said letters patent No. 161848.

And your orators further show that by an assignment, or agreement in writing, duly recorded in the Patent Office, your orators are, and since the seventeenth day of July, 1875, have been, the sole and exclusive owners of the said reissued letters patent No. 6370, and No. 6451, and the said patent No. 161848, and all the rights and privileges granted and secured thereby, the legal title thereto being vested in your orators, the Wilson Packing Company, in trust for themselves and the others of your said orators.

And your orators further that the said several inventions described, and claimed, and patented in and by said several letters
15 patent No. 6370, No. 6451, and No. 161848, relate to the same subject and are capable of being used together in one package of preserved meat, and in the infringement hereinafter complained of were so used conjointly and together by the defendants.

And your orators further show unto your honors that since the granting of the said letters patent aforesaid the said patentees, and those acting under them, have brought the said inventions into public use in various parts of the country, and that the same are of great value and have remained in the exclusive possession and use of said patentees and those holding under them, to the great benefit of the public and great gain to said patentees and assignees, of which gains your orators are justly deprived by the acts of the defendants hereinafter mentioned.

And your orators further show unto your honors that since the date of the seventeenth day of July, 1875, and at divers times and occasions between that time and the time of filing this, your orators' bill of complaint, the defendants herein, Robert D. Hunter, H. B. Merrill, Henry L. Newman, and the St. Louis Beef-Canning Company,
16 as your orators are informed and believe, at East St. Louis, in the southern district of *of* the State of Illinois, and elsewhere in the United States, well knowing the premises, and without any legal assignment, grant, or license therefor, and in defiance of your orators' patent rights aforesaid, have made and constructed, or caused to be made and constructed, for use, and sold, and are now making, constructing, using, and selling large numbers of packages of preserved meats, substa ntially

like, and upon the plan and principle and in imitation of, and embracing in each of said packages, either the whole or one or more of the said inventions and improvements contained in said several letters patent No. 6370, No. 6451, and No. 161848, and the said defendants persist in so doing, and refuse to desist, although warned and requested so to do, whereby great injury has resulted to your orators and great gains and profits to a large sum of money have accrued to the said defendants from the use of your orators' exclusive rights, the full amount of which is unknown to your orators, but which in equity belongs to your
17 orators, and should be accounted for by the said defendants as damages to your orators, and paid over to your orators as the avails of their exclusive rights aforesaid, and profits and gains which your orators would have derived from their said patent rights but for the unlawful acts of the said defendants.

To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief herein prayed, and may upon their corporal oaths with regard to the certain specified interrogatories hereto annexed, and numbered 1, 2, 3, but without oath as to the residue of this bill (an answer on oath, except with regard to said specified interrogatories, being hereby expressly waived), and according to the best and utmost of their knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to all and singular the premises, and that they may be decreed to account for and pay over to your orators all gains and profits realized by them and also the damages suffered by your orators from the unlawful making, using, or vending the improvements vested in your orators as aforesaid, and may be perpetually restrained by an injunction to be issued
18 out of this honorable court from making, using, or vending any packages of preserved meats containing said improvements and inventions, or either of them, and from putting up and packing any meats according to the process set forth in said reissues, or either of them, secured as aforesaid to your orators, or any material part thereof, and that your orator may have such other or further relief as equity may require and to your honors may seem meet:

May it please your honors to grant unto your orators a writ of injunction conformable to the prayer of this bill until the further order of this court, and also a writ of subpœna directed to the said defendants, Robert D. Hunter, H. B. Merrill, Henry L. Newman, and the St. Louis Beef Canning Company, and commanding them, at a certain time and under a certain penalty, to appear before your honors in this court, then and there to answer unto this bill of complaint, and to abide by and perform such decree as the court shall make in the premises; and your orators will ever pray, etc.

WILSON PACKING CO.,
By J. A. WILSON, *Sec'y*,
ARTHUR A. LIBBY,
19 ARCHIBALD McNEIL,
CHARLES C. LIBBY,
By GOODWIN, OFFIELD & TOWLE,
Their Attorneys.

GOODWIN, OFFIELD & TOWLE,
Solicitors, and of Counsel for Complainants.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

John A. Wilson, secretary of the said Wilson Packing Company,

complainant, being duly sworn, deposes and says that he has heard the foregoing bill signed by complainants read, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters he believes the same to be true; and said deponent further says that he does verily believe that the said parties named as inventors in said bill were the original and first inventors of the things patented to them as in said bill stated.

J. A. WILSON.

Subscribed and sworn to this 15th day of June, 1877, before me.

JOHN H. WHIPPLE,
Notary Public.

20 *Interrogatories referred to in the annexed bill of complaint.*

First interrogatory. State whether the patents were issued by the United States, as in said bill of complaint stated and set forth.

Second interrogatory. State whether the defendants, or either of them, have made, used, or sold, or caused to be made, used, or sold, since the seventeenth day of July, 1875, or put up, packed, or sold, or used, or caused the same to be done, since the said date, any packages of preserved meats; and, if so, when and how many of the same?

Third interrogatory. How were the said packages of preserved meats constructed and packed? State particularly the process and manner of construction and packing of the same in detail.

GOODWIN, OFFIELD & TOWLE,
Complainants' Solicitors.

(Endorsed:) Filed June 16th, 1877. J. A. Jones, clerk.

21 And thereupon, on the day and in the year last aforesaid, there was issued out of said clerk's office a subpœna in said cause, directed to the marshal of said district to execute; which said subpœna, together with the return of the marshal thereto, is in the words and figures following, to wit:

Ch'y subpœna.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

The United States of America to Robert D. Hunter, H. B. Merrill, and Henry L. Newman, of St. Louis, in the State of Missouri, and the St. Louis Beef Canning Company, a corporation existing under and by virtue of the laws of the State of Missouri, and having their principal place of business at St. Louis, greeting:

We command you, and every of you, that you appear before our judges of our circuit court of the United States of America for the southern district of Illinois, at Springfield, in said district, on
22 the first Monday in the month of August next, to answer the bill of complaint of the Wilson Packing Company, Arthur Libby, Archibald McNiel, and Charles P. Libby, this day filed in the clerk's office of said court, in said city of Springfield, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the southern district of Illinois to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Springfield aforesaid, this 16th day of June, in the year of our Lord one thousand eight hundred and seventy-seven, and of our Independence the one hundred and first.

[L. S.] J. A. JONES, *Clerk.*

MEMORANDUM.—The above-named defendants are notified that unless they shall enter their appearance in the clerk's office of said court, at Springfield aforesaid, on or before the day to which the above writ is returnable, the complainants' bill will be taken against
23 them as confessed and a decree entered accordingly.

J. A. JONES, *Clerk.*

Marshal's return.

I have served the within writ in the following manner, to wit:

Upon Robert D. Hunter, therein named, on the 18th day of June, A. D. 1877; also upon H. B. Merrill, therein named, on the 18th day of June, A. D. 1877; also upon Robert D. Hunter, as president of the St. Louis Beef Canning Company, therein named, on the 18th day of June, A. D. 1877. The within-named Henry L. Newman not found in my district.

E. R. ROE,
U. S. Marshal,
By C. S. ROE,
Deputy.

(Endorsed:) Filed June 28, A. D. 1877. J. A. Jones, clerk.

And afterwards, to wit, on the 6th day of August, in the year last aforesaid, came certain of the defendants in said cause and filed in said clerk's office their entry of appearance, which is in the words and figures following, to wit:

24 *Appearance of defendants.*

UNITED STATES OF AMERICA,
Southern District of Illinois:

June term, 1877.

THE WILSON PACKING COMPANY AND OTHERS
vs.
ROBERT D. HUNTER, H. B. MERRILL, HENRY L. NEWMAN, and The St. Louis Beef Canning Co., of St. Louis. } In equity.

The clerk of this court will please enter our appearance in the above-entitled cause as solicitors for the above-named defendants Robert D. Hunter and H. B. Merrill, and also for the said St. Louis Beef Canning Company, specially, however, for the purpose of pleading to the jurisdiction of the court as to the said defendant corporation.

NOBLE & ORRICK,
BLUFORD WILSON,
Solicitors & of Counsel.

AUGUST 6TH, 1877.

(Endorsed:) Filed Aug'st 6th, '77. J. A. Jones, clerk.

25 And afterwards, to wit, on the 27th day of October, in the year last aforesaid (1877), came the complainants, by their solicitors, and filed in said clerk's office their amended bill of complaint in said cause, which is in the words and figures following, to wit:

Amended bill.

United States circuit court, southern district of Illinois.

To the honorable the judges of the circuit court of the United States, for the northern district of Illinois, in chancery sitting:

The Wilson Packing Company, a corporation organized under and by virtue of the laws of the State of Illinois, and having their principal place of business at Chicago, and Arthur A. Libby, Archibald McNeil, and Charles P. Libby, of Chicago, in the State of Illinois, and citizens of said State, bring this their amended bill of complaint against Robert D. Hunter, H. B. Merrill, and Henry L. Newman, of St. Louis, in the State of Missouri, and The St. Louis Beef Canning Com-
26 pany, a corporation existing under and by virtue of the laws of the State of Missouri, and having their principal place of business at St. Louis, in said State, and citizens of said State.

And thereupon your orators complain and say that before the thirty-first day of March, eighteen hundred and seventy-four, William J. Wilson was the true, original, and first inventor of a certain new and useful improvement in process for preserving and packing cooked meats not known or used by others before his said invention thereof, and which had not, at the time of his application for a patent therefor been in public use or on sale, with his consent or allowance, for more than two years prior to his application for a patent therefor, as your orators verily believe.

And your orators further show unto your honors that the said William J. Wilson, so being the inventor of said improvement, and being a citizen of the United States aforesaid, made application to the proper department of the Government of the United States for letters patent therefor, in accordance with the then existing laws of Congress, and he having duly complied, in all respects, with the conditions and requisitions of said laws, such proceedings were had that on the
27 thirty-first day of March, eighteen hundred and seventy-four, letters patent of the United States for the said improvement and invention, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior, and countersigned by the Commissioner of Patents, and bearing date the day and year last aforesaid, were issued in due form of law and delivered to the said William J. Wilson, whereby was granted and secured to him and his heirs or assigns for the term of seventeen years from the day of the date thereof, the full and exclusive right of making, using, and vending to others to be used the said improvement and invention, a description whereof is given in the words of the said inventor, in a schedule in writing, duly annexed to said letters patent, when the same were issued and made a part thereof, as by the said original letters patent, or a duly authenticated copy thereof in court to be produced, will fully appear.

And your orators further show that by a mesne assignment in writing from and under the said William J. Wilson, duly recorded in the Patent Office at Washington, your orators, the said Wilson Packing Company, became vested with all the exclusive rights and privileges, and

28 with all the interests granted in and by the said above-mentioned original letters patent issued to the said William J. Wilson.

And your orators further show unto your honors that afterwards the said William J. Wilson, your orators, the said Wilson Packing Company consenting, for good and lawful cause, surrendered said last-mentioned original letters patent to the Commissioner of Patents, and duly made application for a new patent to be issued for the same invention, and accompanied such application with a corrected description and specification, and with the requisite drawings, and in all respects complied with the acts of Congress in such case made and provided; whereupon, on the sixth day of April, eighteen hundred and seventy-five, new letters patent for the same invention last mentioned were, in accordance with law, duly granted, issued, and delivered to your orators, the said Wilson Packing Company, assignees of the said William J. Wilson, for the residue of said term of seventeen years; that said last-mentioned letters patent were so issued in accordance with and in due form of law, under the seal of the Patent Office of the United

29 States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents, and bear date the day and year last aforesaid, and were numbered and designated as reissue No. 6370, and that there was by said last-mentioned reissued letters patent secured to your said orators, The Wilson Packing Company, their successors or assigns, for the term of seventeen years from the thirty-first day of March, eighteen hundred and seventy-four, the full and exclusive right of making, using, and vending to others to be used, the said original improvement and invention patented to the said William J. Wilson, and that a legal corrected description and specification of the said original improvement and invention contained in said reissued letters patent is given in the words of William J. Wilson in a certain schedule, accompanied by drawings and written references thereto, which was in due form of law annexed to said reissued letters patent at the time the same were issued, and made a part thereof, as by the said last-mentioned reissued letters patent, or a duly authenticated copy thereof, to be produced as the court shall direct, will fully appear; a copy of which, without the drawings, is hereto annexed, forming part of this amended bill, marked Schedule A.

30 And your orators further complain and say that before the twelfth day of July, eighteen hundred and sixty-four, William C. Marshall was the true, original, and first inventor of a certain new and useful improvements in process for preserving cooked meats not known or used by others before his said invention thereof, and which had not at the time of his application for a patent therefor, been in public use or on sale, with his consent or allowance, for more than two years prior to his application for a patent therefor, as your orators verily believe.

And your orators further show unto your honors that the said William C. Marshall, so being the inventor of said improvement, and being a citizen of the United States aforesaid, made application to the proper departments of the Government of the United States for letters patent therefor, in accordance with the then existing laws of Congress, and he having duly complied, in all respects, with the conditions and requisitions of said laws, such proceedings were had that on the twelfth day of July, eighteen hundred and sixty-four, letters patent of the United States for the said improvement and invention, under the seal of

31 the Patent Office of the United States, signed by the Secretary of the Interior, and countersigned by the Commissioner of Pat-

ents, and bearing date the day and year last aforesaid, were issued in due form of law and delivered to the said William C. Marshall, whereby was granted and secured to him and his heirs, executors, administrators or assigns for the term of seventeen years from the day of the date thereof, the full and exclusive right of making, using, or vending to others to be used, the said improvement and invention, a description whereof is given in the words of the said inventor, in a schedule in writing, accompanied by drawings and references thereto duly annexed to said letters patent, or a duly authenticated copy thereof, in court to be produced, will fully appear.

And your orators further show that by a mesne assignment in writing from and under the said William C. Marshall, duly recorded at the Patent Office at Washington, your orator Arthur A. Libby became vested with all the exclusive rights and privileges, and with all the interest granted in and by the said last above-mentioned original letters patent to said William C. Marshall.

And your orators further show unto your honors that afterwards the said William C. Marshall (your said orator Arthur A.
32 Libby consenting), for good and lawful cause, surrendered said last mentioned letters patent to the Commissioner of Patents, and duly made application for a new patent to be issued for the same invention, and accompanied such application with a corrected description and specification, and with requisite drawings, and in all respects complied with the acts of Congress in such case made and provided; whereupon, on the twenty-fifth day of May, eighteen hundred and seventy-four, new letters patent for the same invention last mentioned were, in accordance with law, duly granted, issued, and delivered to your said orator Arthur A. Libby, assignee of said William C. Marshall, in two divisions, Division A and Division B, for the residue of said term of seventeen years; that said last mentioned letters patent were so issued, in accordance with and in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents, and bear date the day and year last aforesaid, and were numbered and designated as reissue No. 6451, Division A, and No.
33 6452, Division B, and that there was by said last mentioned reissued letters patent secured to your orator said Arthur A. Libby, his heirs or assigns, for the term of seventeen years from the twelfth day of July, eighteen hundred and sixty-four, the full and exculsive right of making, using, and vending to others to be used, the said original improvement and invention patented to the said William C. Marshall; that a legal corrected description and specification of said original improvement and inventions contained in said reissued letters patent is given in the words of the said William C. Marshall in two certain schedules, accompanied by drawings and written references thereto which was in due form of law annexed to said reissued letters patents at the time the same were issued and made a part thereof, as by the said last mentioned reissued letters patent, or a duly authenticated copies thereof, to be produced as the court shall direct, will fully appear, a copy of which letters patent, Division A, without the drawings, is hereto annexed, forming a part of this amended bill, marked Schedule B.

34 And your orators further show that by an assignment or agreement in writing duly recorded in the Patent Office, your orators are, and since the seventeenth day of July, 1875, have been the sole and exclusive owners of the said reissued letters patent No. 6370, and

No. 6451, Division A, and all the rights and privileges secured thereby; the legal title thereto being vested in your orators The Wilson Packing Company, in trust for themselves and the others of your said orators.

And your orators further show that the said several inventions described and claimed and patented in and by the said several letters patent No. 6451, Division A, relate to the same subject and are capable of being used together in making one package of preserved meat, and in the infringement hereinafter complained of were so used conjointly and together by the defendants.

And your orators further show, on information and belief, that the said defendant Robert D. Hunter is the president of the said defendant corporation, the St. Louis Beef Canning Company, and that the said Robert D. Hunter, has his office and place of business at
35 East St. Louis, in the State of Illinois, and within the southern district of said State; that the said defendant, H. B. Merrill at the time of exhibiting the original bill in this cause, was secretary of the said defendant corporation, and had his office and place of business at said East St. Louis, in the State of Illinois; and the office of the secretary of said corporation is at the latter place; that the said defendant Henry L. Newman was then and now is treasurer of the said defendant corporation, having his place of business and office at said East St. Louis, in the State of Illinois; and that the office of the treasurer of said defendant corporation is at the latter place; that the said Robert D. Hunter, H. B. Merrill, and Henry L. Newman are directors of said defendant corporation, and managers of its affairs; that the said St. Louis Beef Canning Company owns and possesses a slaughter house and stock yard at East St. Louis, aforesaid, where the beef to be canned by said company is slaughtered and dressed, preparatory to said canning, by the officers and agents of said company, for and in the name of said company.

And your orators further show unto your honors, that since the
36 granting of the said letters patents aforesaid, the said patentees, and those acting under them, have brought the said inventions into public use in various parts of the country, and that the same are of great value, and have remained in the exclusive possession and use of said patentees and those holding under them to the great benefit of the public and great gains to said patentees and assignees, of which gains your orators are unjustly deprived by the acts of the defendants hereinafter mentioned.

And your orators further show unto your honors, that since the date of the 17th day of July, 1875, and at divers times and occasions between that time and the time of filing your orators' bill of complaint, the defendants herein, Robert D. Hunter, H. B. Merrill, and Henry L. Newman, individually, and as officers of the said St. Louis Beef Canning Company, and the said defendant corporation, as your orators are informed and believe, at East St. Louis, in the southern district of the State of Illinois, and elsewhere in the United States, well knowing the premises, and without any legal assignment, grant, or license therefor, and in defiance of your orators, patent rights aforesaid, have
37 used the said inventions and things patented, and have made and constructed, or caused to be made and constructed for use, and have sold, and are now making, constructing, using, and selling, large numbers of packages of preserved meats, using the process described in said patents, and substantially like and upon the plan and principle, and in imitation of, and embracing in each of said packages, either the whole or one or more of the said inventions and improvements

contained in said several letters patent, No. 6370, No. 6451, division, and the said defendants persist in so doing, and refuse to desist, although warned and requested so to do. Whereby great injury has resulted to your orators, and great gains and profits to a large sum of money have accrued to the said defendants from the use of your orators, exclusive rights; the full amount of which is unknown to your orators, but which in equity belong to your orators, and should be accounted for by the said defendants as damages to your orators, and paid over to your orators as the avails of their exclusive rights aforesaid, and profits and gains which your orators would have de-
38 rived from their said patent rights but for the unlawful acts of the said defendants.

To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief herein prayed, and may upon their corporal oaths with regard to the certain specified interrogatories hereto annexed and numbered 1, 2, 3, but without oath as to the residue of this amended bill (an answer on oath, except with regard to said specified interrogatories being hereby expressly waived), and according to the best and utmost of their knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to all and singular the premises; and that they may be decreed to account for and pay over to your orator all gains and profits realized by them, and also the damages suffered by your orator from the unlawful making, using, or vending the improvements vested in your orator as aforesaid; and may be perpetually restrained, by an injunction to be issued out of this honorable court, from making, using, or vending any packages of preserved meats containing said improvements and inventions, or either of them, and from putting up and packing
39 any meats according to the process set forth in the said reissued or either of them, secured as aforesaid to your orators, or any material part thereof; and that your orators may have such other or further relief as equity may require and to your honors may seem meet—

May it please your honors to grant unto your orators a writ of injunction, conformable to the prayer of this amended bill, until the further order of this court, and also a writ of subpœna, directed to the said defendants, Robert D. Hunter, H. B. Merrill, Henry L. Newman, and The St. Louis Beef Canning Company, and commanding them, at a certain time and under a certain penalty, to appear before your honors in this court, then and there to answer unto this amended bill of complaint, and to abide by and perform such decree as the court shall make in the premises. And your orators will ever pray, etc.

WILSON PACKING COMPANY,
By J. A. WILSON, *Sec'y & Treas'r.*
ARTHUR A. LIBBY,
ARCHIBALD McNEIL,
40 CHARLES P. LIBBY,
By GOODWIN, OFFIELD & TOWLE,
Their Solicitors.

GOODWIN, OFFIELD & TOWLE,
Solicitors and of Counsel for Complainants.
WEST & BOND,
Of Counsel.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

James A. Wilson, the secretary & treasurer of the said Wilson Packing Company, complainant, being duly sworn, deposes and says that he has heard the foregoing amended bill, signed by him, read, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters he believes the same to be true; and said deponent further says that he does verily believe that the said several patentees, as alleged in said bill, were respectively the original and first inventors of the things patented to them respectively, as in said amended bill stated.

J. A. WILSON.

41 Subscribed and sworn to this 26th day of October, A. D. 1877, before me.

[L. S.] JOHN H. WHIPPLE.

Interrogatories referred to in the annexed bill of complaint.

First interrogatory. State whether the patents were issued by the United States as in said bill of complaint set forth.

Second interrogatory. State whether the defendants or either of them have made, used, or sold, or caused to be made, used, or sold, since the seventeenth day of July, 1875, or put up, packed, or sold, or used, or caused the same to be done, since the said date any packages of preserved meats; and, if so, when and how many of the same.

Third interrogatory. How where the said packages of preserved meats constructed and packed? State particularly the process and manner of construction and packing of the same in detail.

GOODWIN, OFFIELD & TOWEL,
Compl'ts Solicitors.

42 SCHEDULE A.

No. 6370—reissue.

The United States of America, to all to whom these presents shall come:

Whereas William J. Wilson, of Chicago, Illinois, assignor by mesne assignment to The Wilson Packing Company has presented to the Commissioner of Patents a petition praying for the reissue of letters patent for an alleged new and useful improvement in process for preserving and packing cooked meats (for which letters patent were issued to him dated March 31, 1874, which letters having been surrendered, the same have been cancelled, and new letters ordered to issue to said assignee on an amended specification), a description of which invention is contained in the specifications of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and

Whereas, upon due examination made the said claimant is adjudged to be justly entitled to a patent under the law:

Now, therefore, these letters patent are to grant unto the said
43 Wilson Packing Company, its successors, or assigns, for the term of seventeen years from the thirty-first day of March, one

thousand eight hundred and seventy-four, the exclusive right to make, use, and vend the said invention throughout the United States and the Territories thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of Washington, this sixth day of April, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States of America the ninety-ninth.

[L. S.]

C. DELANO,
Secretary of the Interior.

Countersigned:

J. M. THACHER,
Commissioner of Patents.

UNITED STATES PATENT OFFICE.

William J. Wilson, of Chicago, Illinois, assignor by mesne assignments to The Wilson Packing Company, improvement in processes for preserving and packing cooked meats. Specification forming part of letters patent No. 149276, dated March 31, 1874, reissue
44 No. 6370, dated April 6, 1875, application filed April 2, 1875,

To all whom it may concern:

Be it known that I, Wm. J. Wilson, of Chicago, in the county of Cook and State of Illinois, have invented certain new and useful improvements in process for preserving and packing cooked meats; and I do hereby declare that the following is a full, clear, and exact description thereof:

The nature of my invention consists in a process for packing cooked meats for transportation in a compressed form into an air-tight package so as to preserve the meat in its integrity and retain all the natural juices and nutritious qualities of the meat.

In carrying out my invention, the meat is first cooked thoroughly at a temperature of 212° Fahrenheit, so that all the bone and gristle can be removed and the meat yet retain its natural grain and integrity. The meat is then in proper condition for eating, and is wholesome and palatable. A measured quantity of this cooked meat is then, preferably while yet warm with cooking, pressed by any suitable apparatus
45 into a previously prepared box or case, with sufficient force to remove the air and all superfluous moisture and make the meat form a solid cake. The box or case is then closed air-tight upon the meat.

The meat is thus packed and compressed in its natural state; that is, without disintegration or desiccation; and it retains all the juices and nutritious qualities of the meat, the compression only removing the superfluous moisture.

The meat thus put up is available at all times, even when cooking is impracticable, as it is already cooked before it is packed. It is more economical, as it is compressed and reduced in weight one-half from the uncooked weight, being free from bone and gristle, and put up in a compact portable shape for transportation, rendering the usual expensive cooperage unnecessary. Besides there is a great saving in the cost of transportation.

A barrel containing two hundred pounds uncooked meat weighs, gross, three hundred and twenty pounds, meat, salt, brine, and barrel, while

by my process it would weigh only one hundred and ten pounds
46 gross, making a saving in cost of freight alone of nearly two-thirds.

The box or case may be made of wood or metal, or both combined, of any suitable form or shape, and of any desired dimensions.

Having thus fully described my invention, what I claim as new, and desire to secure by letters patent, is—

1. The within-described process for packing cooked meats for transportation by compressing the same into an air-tight package, so as to preserve the meat in its integrity and retain all the natural juices and nutritious qualities of the meat, substantially as set forth.

2. As a new article of merchandise, cooked meat put up in solid form, in its natural state, without disintegration or desiccation, in hermetically sealed packages, as set forth.

In testimony that I claim the foregoing I have hereunto set my hand this 26th day of March, 1875.

WILLIAM J. WILSON.

Witnesses:
HARRY P. FULTON.
J. MCDOWELL.

47 SCHEDULE B.

No. 6451—reissue.

The United States of America, to all to whom these presents shall come:

Whereas William C. Marshall, of New York, New York, assignor to Arthur A. Libby, of Chicago, Illinois, has presented to the Commissioner of Patents a petition praying for the reissue of letters patent for an alleged new and useful improvement in processes for preserving meats, (for which letters patent were issued to him, dated July 12, 1864, which letters having been surrendered the same have been cancelled, and new letters ordered to issue to said assignee on two separate specifications), a description of which invention is contained in the specification, of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and

Whereas, upon due examination made, the said claimant is adjudged to be justly entitled to a patent under the law:

Now, therefore, these letters patent are to grant unto the said Arthur A. Libby, his heirs or assigns, for the term of seventeen years
48 from the twelfth day of July, one thousand eight hundred and sixty-four, the exclusive right to make, use, and vend the said invention throughout the United States and the Territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of Washington, this twenty-fifth day of May, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States of America the ninety-ninth.

[L. S.]

B. R. COWAN,
Acting Secretary of the Interior.

Countersigned:

J. M. THACHER,
Commissioner of Patents.

UNITED STATES PATENT OFFICE.

William C. Marshal, of New York, N. Y., assignor to Arthur A. Libby, of Chicago, Illinois, improvement in processes for preserving meats. Specification forming of letters patent No. 43516, dated July 12, 1864, reissue No. 6451, dated May 25, 1875; application filed May 19, 1875. Division A.

49 To all whom it may concern:

Be it known that I, W. C. Marshall, of the city, county, and State of New York, have invented a new and improved process for preserving meats, and I do hereby declare that the following is a full, clear, and exact description thereof, which will enable others skilled in the art to carry out and use the same.

This part of my invention consists in exposing the meat to be preserved, after it has been subjected to a partial preserving process, and before it is put up in packages or boxes, to a heavy pressure, by any suitable means or apparatus, in such a manner that a large percentage of the water and a large part of the air contained between the various pieces and in the pores of the meat are expelled before the meat is put in packages, by which means the principal agents of putrefaction are removed and the bulk considerably reduced.

Any desired quantity of meat may be compressed to agree with the size of the packages, and such compressed meats being non-elastic, readily retains its bulk and solid form and can then easily be
50 forced, by any desirable pressure, into the package without exposing the latter to any undue strain or pressure.

The ordinary method of preserving meat for commercial purpose is substantially as follows: The meat, being first subjected to the action of salt and saltpeter in the form of a brine, until the water of the meat is saturated, is then removed from the brine and placed in packages of wood with an entirely new solution of salt and saltpeter. This process is known to be destructive of all, or nearly all, the nutritious values of the meat in a very short space of time.

My process is as follows: After rendering the water of the meat, which is the chief agent in destruction, temporarily proof against putrefaction by any of the ordinary processes, by which I remove a large percentage of the water, the remainder being charged with the concentrated antiseptics, I then subject a given quantity of the meat to pressure in a suitable mold, and subsequently into the package or boxes intended to contain the same until the air is driven out and the space occupied by the meat agrees with the size of the package or box
51 it is intended to fill. When the compressed meat is in its place, the package or box is hermetically sealed, the air remaining in the same being expelled by the usual process in canning. In this state retaining all its nutritious qualities, the meat will remain perfect as long as the package remains intact.

The advantages of this process are, first, that the natural values of the meat are not destroyed by the means of protecting it from putrefaction as is unavoidable in the ordinary process; second, that only about one-half the space and weight ordinarily required is necessary by this mode for the same quantity of meat.

Having thus fully described my invention, what I claim as new, and desire to secure by letters patent, is—

1. The process herein described for packing and preserving meats, the same consisting in subjecting the meat, after it has been exposed to

by my process it would weigh only one hundred and ten pounds
46 gross, making a saving in cost of freight alone of nearly two-thirds.

The box or case may be made of wood or metal, or both combined, of any suitable form or shape, and of any desired dimensions.

Having thus fully described my invention, what I claim as new, and desire to secure by letters patent, is—

1. The within-described process for packing cooked meats for transportation by compressing the same into an air-tight package, so as to preserve the meat in its integrity and retain all the natural juices and nutritious qualities of the meat, substantially as set forth.

2. As a new article of merchandise, cooked meat put up in solid form, in its natural state, without disintegration or desiccation, in hermetically sealed packages, as set forth.

In testimony that I claim the foregoing I have hereunto set my hand this 26th day of March, 1875.

WILLIAM J. WILSON.

Witnesses:
HARRY P. FULTON.
J. MCDOWELL.

47 SCHEDULE B.

No. 6451—reissue.

The United States of America, to all to whom these presents shall come:

Whereas William C. Marshall, of New York, New York, assignor to Arthur A. Libby, of Chicago, Illinois, has presented to the Commissioner of Patents a petition praying for the reissue of letters patent for an alleged new and useful improvement in processes for preserving meats, (for which letters patent were issued to him, dated July 12, 1864, which letters having been surrendered the same have been cancelled, and new letters ordered to issue to said assignee on two separate specifications), a description of which invention is contained in the specification, of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and

Whereas, upon due examination made, the said claimant is adjudged to be justly entitled to a patent under the law:

Now, therefore, these letters patent are to grant unto the said Arthur A. Libby, his heirs or assigns, for the term of seventeen years
48 from the twelfth day of July, one thousand eight hundred and sixty-four, the exclusive right to make, use, and vend the said invention throughout the United States and the Territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of Washington, this twenty-fifth day of May, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States of America the ninety-ninth.

[L. S.]

B. R. COWAN,
Acting Secretary of the Interior.

Countersigned:

J. M. THACHER,
Commissioner of Patents.

UNITED STATES PATENT OFFICE.

William C. Marshal, of New York, N. Y., assignor to Arthur A. Libby, of Chicago, Illinois, improvement in processes for preserving meats. Specification forming of letters patent No. 43516, dated July 12, 1864, reissue No. 6451, dated May 25, 1875; application filed May 19, 1875. Division A.

49 To all whom it may concern:

Be it known that I, W. C. Marshall, of the city, county, and State of New York, have invented a new and improved process for preserving meats, and I do hereby declare that the following is a full, clear, and exact description thereof, which will enable others skilled in the art to carry out and use the same.

This part of my invention consists in exposing the meat to be preserved, after it has been subjected to a partial preserving process, and before it is put up in packages or boxes, to a heavy pressure, by any suitable means or apparatus, in such a manner that a large percentage of the water and a large part of the air contained between the various pieces and in the pores of the meat are expelled before the meat is put in packages, by which means the principal agents of putrefaction are removed and the bulk considerably reduced.

Any desired quantity of meat may be compressed to agree with the size of the packages, and such compressed meats being non-elastic, readily retains its bulk and solid form and can then easily be
50 forced, by any desirable pressure, into the package without exposing the latter to any undue strain or pressure.

The ordinary method of preserving meat for commercial purpose is substantially as follows: The meat, being first subjected to the action of salt and saltpeter in the form of a brine, until the water of the meat is saturated, is then removed from the brine and placed in packages of wood with an entirely new solution of salt and saltpeter. This process is known to be destructive of all, or nearly all, the nutritious values of the meat in a very short space of time.

My process is as follows: After rendering the water of the meat, which is the chief agent in destruction, temporarily proof against putrefaction by any of the ordinary processes, by which I remove a large percentage of the water, the remainder being charged with the concentrated antiseptics, I then subject a given quantity of the meat to pressure in a suitable mold, and subsequently into the package or boxes intended to contain the same until the air is driven out and the space occupied by the meat agrees with the size of the package or box
51 it is intended to fill. When the compressed meat is in its place, the package or box is hermetically sealed, the air remaining in the same being expelled by the usual process in canning. In this state retaining all its nutritious qualities, the meat will remain perfect as long as the package remains intact.

The advantages of this process are, first, that the natural values of the meat are not destroyed by the means of protecting it from putrefaction as is unavoidable in the ordinary process; second, that only about one-half the space and weight ordinarily required is necessary by this mode for the same quantity of meat.

Having thus fully described my invention, what I claim as new, and desire to secure by letters patent, is—

1. The process herein described for packing and preserving meats, the same consisting in subjecting the meat, after it has been exposed to

preserving processes as described, to a heavy pressure and packing and hermetically sealing the so compressed meat in packages or boxes, substantially as and for the purpose herein set forth.

52 2. As a new article of manufacture, the above-described compressed meat preserved in solid form without disintegration or desiccation in hermetically sealed packages substantially as herein set forth.

W. C. MARSHALL.

Witnesses:
E. N. HORSFORD.
J. VAN SANTVOORD.

(Endorsed:) Filed Oct. 27th, A. D. 1877. J. A. Jones, clerk.

And afterwards, to wit, on the 5th day of November, in the year last aforesaid (A. D. 1877) came the St. Louis Beef Canning Company, one of the defendants in said cause and filed in said clerk's office their plea, which said plea is in the words and figures, following, to wit:

Plea of St. Louis Beef Canning Co.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

United States circuit court within and for said district.

53 WILSON PACKING COMPANY ET AL., complainants,
vs.
ROBERT D. HUNTER ET AL., DEFENDANTS.

The plea of the St. Louis Beef Canning Company to the amended bill of complaint of the Wilson Packing Company, Arthur A. Libby, Archibald McNiel, and Charles P. Libby, complainants.

This defendant by protestation, not confessing or acknowledging all or any of the matters and things in said complainants' said bill of complaint mentioned or contained, to be true in sort, manner, or form, as the same are therein set forth and alleged, for a plea to the whole of said bill says that the court here ought not to take nor will take cognizance of the cause aforesaid as to this defendant, because this defendant, said St. Louis Beef Canning Company, is, and was at the commencement of this suit, a corporation duly authorized, organized, and acting under and solely by virtue of the laws of the State of Missouri and not under or by virtue of the laws of the State of Illinois, or of said United States, and now has, and then had, its principal place of

54 business and also the office of its treasurer and secretary, as well as that of its president, in the city of St. Louis, in the State of Missouri, and not at said East St. Louis, in the State of Illinois, or elsewhere than as here stated; and that said defendant H. B. Merrill, now is and then was secretary of this defendant, and said defendant Henry L. Newman now is and then was treasurer of this defendant, each only at said city of St. Louis and in the State of Missouri, and not at said East St. Louis in the State of Illinois or elsewhere than as here stated, and this defendant is not, and was not at the commencement of this suit, nor at the time of the intended service of original process herein, an inhabitant of said southern district of Illinois, but was then,

and is now, and always since its organization has been, an inhabitant solely and only of the eastern district of Missouri, State of Missouri and because, as this defendant further says in this behalf, it this defendant, was not at the commencement of this suit, nor at the time of the pretended service of original process herein, found in said south-
55 ern district of Illinois, but, as this defendant says, it, this defendant, was at the several times mentioned, is now, and always since its organization has been, an inhabitant of, and might have been and now can be found in, said eastern district of Missouri, at said city of St. Louis, State of Missouri, in which said eastern district of Missouri there is now, was at the time of the exhibition of complainants' original bill, and of said amended bill, and long before either of said times, a circuit court of said United States having jurisdiction of matters of the sort and nature in said bill and amended bill alleged, and having jurisdiction over the person of this defendant, and wherein said complainants might legally appear. And this defendant says on the exhibition of said original bill and of said amended bill said several matters in said amended bill contained were, and of a right ought to be, pleaded and pleadable within said circuit court of said United States in and for said eastern district of Missouri, as to this defendant, and not in this court, and all which things and matters this defendant is ready to verify.

56 Wherefore this defendant prays judgment if your honorable court will or ought to have further cognizance of the cause aforesaid, and prays judgment of this honorable court whether this defendant ought further to answer this bill, and prays to be hence dismissed with its reasonable costs in this behalf wrongfully sustained.

[L. S.] ST. LOUIS BEEF-CANNING COMPANY,
ROBERT D. HUNTER, *President.*
NOBLE & ORRICK, *Solicitors.*

BLUFORD WILSON,
JOHN W. NOBLE,
Counsel.

EASTERN DISTRICT OF MISSOURI, *ss:*

Robert D. Hunter, being duly sworn, on his oath says that he is president of said defendant, The St. Louis Beef-Canning Company; that the seal affixed to the foregoing plea is the corporate seal of said defendant; that affiant has heard said plea read, and that the same is true in point of fact and is not interposed for delay.

ROBERT D. HUNTER.

57 Subscribed and sworn to before me, a commissioner of *of* the circuit court of the United States in and for the said eastern district of Missouri, at office, St. Louis, Mo.
November 1st, 1877.

C. M. WARD,
Com'r Circuit Court United States,
for the Eastern District of Missouri.

I hereby certify that in my opinion the foregoing plea is well founded in point of law.

JOHN W. NOBLE,
Counsel.

UNITED STATES OF AMERICA,
Eastern District of Missouri:

I, M. M. Price, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify that C. M. Ward, before whom the above affidavit was taken, is a commissioner of the circuit court of the United States for the eastern district of Missouri, duly qualified and commissioned, and that his signature thereto is in his own handwriting.

58 In witness whereof I hereunto subscribe my name and affix the seal of said court at office, in the city of St. Louis in said district, this 2d day of November, in the year of our Lord eighteen hundred and seventy-seven.

[L. S.]

M. M. PRICE,
Clerk of said Court,
By T. L. CRAWFORD,
Deputy.

(Endorsed:) Filed November 5, 1877. J. A. Jones, clerk.

And afterwards, to wit, on the 2d day of February, in the year of our Lord one thousand eight hundred and seventy-eight, came Robert D. Hunter and Henry B. Merrill, two of the defendants in said cause, and filed in said clerk's office their answer; which said answer is in the words and figures following, to wit:

Answer of def'ts Hunter & Merrill.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

59 In the United States circuit court in and for the said southern district.

THE WILSON PACKING COMPANY ET AL., complainants,
vs.
ROBERT D. HUNTER, H. B. MERRELL, ET al., defendants.

The joint and several answer of Robert D. Hunter and H. B. Merrell, two of the defendants to the amended bill of complaint of the Wilson Packing Company, Arthur A. Libby, Archibald McNiel, and Charles P. Libby, complainants.

The defendants, respectively, now and at all times hereafter, saving to themselves, all and singular, all manner of benefit of advantage of exception or otherwise that can or may be had or taken of the many errors or imperfections in the said bill contained, for answer thereto or to so much thereof as these defendants are advised is material or necessary for them to make answer to, answering, say:

That by no alleged assignment or agreement in writing, recorded as alleged in the Patent Office, are said complainants, or have they been since July 17, 1875, or before said date, the sole and exclusive owner of said alleged letters patent, number 6370 and number 6451, division A, or either of them, of any of patented rights or privileges purported to be secured thereby.

60 And these defendants say that no legal title is vested in said Wilson Packing Company in trust for themselves and said other

complainants in manner and form as in said bill stated by said alleged writing.

And these defendants say that by a certain instrument in writing, dated July 17, 1875, and recorded in said Patent Office, and which purports to be an assignment by said Arthur A. Libby, complainant, only of any right, title, and interest he may have in said letters patent number 6451, division A, and number 6452, division B, and which these defendants say is the only instrument in writing, assignment, or agreement referred to, or intended to be referred to, by the complainant in this behalf, as defendants are informed and believe, and so say, no trust was or is created, or intended to be created, in favor of said complainants, Archibald McNeil and Charles P. Libby, and the defendants say that neither by the said instrument in writing, nor in any other manner, or in any way, have said last-named complainants or either of them, acquired or become vested with any right, title, or interest, legally or equitably, in the said alleged letters patent, or either of them, nor in any supposed right or privilege purporting to be thereby granted, or either of them.

61 And these defendants say that the said Archibald McNiel and Charles P. Libby are illegally and improperly joined as complainants in said bill with the said Wilson Packing Company and Arthur A. Libby, as are also the said Wilson Packing Company and the said Arthur A. Libby, illegally and improperly joined with the said Archibald McNiel and Charles P. Libby, as complainants in the said bill, the one with the other.

And these defendants do now insist, and shall at all times insist, upon said misjoinder as a defence to the whole of said bill.

The defendants, further answering, say they are informed and belive that on the 31st day of March, 1874, letters patent of the United States were issued to and delivered to said William J. Wilson for an alleged improvement in process for preserving and packing cooked meats, but defendants say the same were not for any actual improvement in facts and said letters patent were not the same in manner and form alleged in said bill. And defendants ask that complainants may be required to produce, in support of said bill, said original letters, if any there are, and defendants beg leave to refer thereto for greater certainty.

62 The defendants say they are not informed otherwise than by said bill whether any mesne assignment of said letters patent was made to said Wilson Packing Company, or recorded as alleged in the Patent Office, and cannot admit or deny the same, but defendants say that neither by any assignment or otherwise were said Wilson Packing Company vested with any exclusive rights or privileges or any interest in manner and form alleged.

And these defendants say they are not informed, save by said bill, and cannot admit or deny whether said Wiliam J. Wilson surrendered the letters patent alleged to have been surrendered by said bill in manner and form alleged.

These defendants admit that on the 6th day of April, 1875, certain letters patent were granted and delivered to the said Wilson Packing Company alleged therein to be assignees, as stated, which bore date as stated, and were numbered 6370 as stated, but defendants say they are informed and believe that the said letters patent last named were not for the same invention for which said original letters patent were issued or for any invention or improvement in point of fact, or

63 were said original letters patent for any invention or improvement in point of fact.

And these defendants say, as they are informed and believe, and so charge, the said last named letters patent number 6370, purporting to be a reissue for said certain other original letters patent were, not for the same supposed or intended invention stated in the said original letters patent surrendered therefor or for any invention, but for another and different supposed or pretended invention from the supposed or pretended invention described in said original letters patent, as by comparison of the said reissued letters patent, and the schedule thereunto annexed, number 6370, and dated April 6th, 1875, with said original letters patent by this honorable court to be made will fully appear, and that thereby, as these defendants say, the said reissued letters patent were from the beginning and now are absolutely void on their face and of no effect.

Defendants do not admit either the said original or reissued letters patent were for any actual invention, improvement, or discovery, but aver, as aforesaid, they were not nor was either of them, but that said reissued letters patent were for a different pretended invention from the
64 supposed invention in said original letters set forth, as appears thereby.

These defendants, further answering, say they are informed and believed, that on the 12th day of July, 1864, certain letters patent of the United States were issued and delivered to one William C. Marshall for a supposed improvement in the process for preserving meats, but these defendants say the said letters were not for any improvement in point of fact, nor were said letters for cooked meats as alleged or the same in manner and form as stated in said bill, and these defendants ask that the complainants may be required to produce said letters (if any there be), and beg leave to refer thereto for the contents and legal effect of the same when so produced by complainants.

These defendants say they have no information, save by said bill and, cannot, therefor, admit or deny whether any mesne assignment was made to said Arthur A. Libby or recorded as alleged, in the Patent Office, but said defendants say said Libby was not vested with any exclusive rights or privileges, or any interest in manner and form alleged. And these defendants say they are not informed, save
65 by said bill, and therefore cannot admit or deny whether said William C. Marshall surrendered the letters patent alleged by said bill to have been surrendered in manner and form as stated. These defendants admit that on the 25th day of May, 1875, certain letters patent were granted and delivered to the said Arthur A. Libby, alleged to be assignee, as therein stated, which bore date as stated, and were numbered 6451, Division A, and number 6452, Division B, but say said letters were not for cooked meats as alleged.

But these defendants say they are informed and believe that the said reissued letters patent last named were not for the same supposed invention for which said original and last named letters and referred to therein were issued, or for any invention or improvement in point of fact, or were said original letters patent for any actual invention or improvement.

And these defendants say, as they are informed and believe, and so charge said last-mentioned letters patent number 6451, Division A, as well as said letters number 6452, Division B, purporting to be
66 a reissue for said certain other original letters patents, were not for the said supposed and pretended invention stated in said let-

ters patent surrendered therefor, or for any invention in point of fact, but for another and different supposed and pretended invention from the supposed and pretended invention described in said original letters, as by a comparison of said letters patent and the schedules thereunto annexed, dated May 25th, 1875, with said original letters and schedules thereunto annexed, by this honorable court to be made, will fully appear, and that thereby, as these defendants say, the said reissued letters patent of May 25th, 1875, from the beginning and now are absolutely void on their face and of no effect.

Defendants do not admit that either said original or reissued letters last named were for any invention, improvement, or discovery in point of fact, but aver they were not or was either of them, but that said original letters last named were for a different pretended invention from the pretended invention in said original letters set forth.

And these defendants, further answering, deny that since the granting of said pretended letters patent, or either of them, the said pretended patentees, or either of them, or those acting under them, or either
67 of them, have brought said supposed inventions, or either of them, into public use at any place in manner and form stated; and deny that the said pretended inventions, or either of them, are of great value to the said patentees, or either of them, or those claiming under them, or said complainants. These defendant' say that said process for preserving and packing cooked meats are and have been of great value to the people at large, and said processes, these defendants aver, are the same described and referred to in complainants' bill, and which said complainants have attempted by means of said pretended patents to appropriate to themselves, but deny that the processes or improvements are of any peculiar value to the complainants or either of them, by means of said letters patent, or either of them, or that said complainants have acquired any legal or equitable right thereto. And defendants deny that the said supposed improvement in said processes, or either of them, have remained in the exclusive possession of said pretended patentees, or either of them, or those claiming under them, or either of them, or that the same, or either of them have been of great benefit to the public, otherwise than as processes well understood and known before said let-
68 ters patent were issued and independent of said letters, patent or either of them, and deny that the same have been of great gain to the said patentees or assignees by any rightful claim thereto, or otherwise than by the illegal appropriation thereof, and deny that the said complainants, or either of them, have been deprived by the acts of these defendants, or either of them, of any gains whatever lawful to have been enjoyed or in any other manner as alleged in said bill.

And these defendants, and each of them, particularly deny that they, individually or as officers of the St. Louis Beef Canning Company, defendants herein, or that said corporation defendants, either at East St. Louis, in the said district of the State of Illinois, or elsewhere, has or have ever used the said supposed inventions and things patented as alleged, or ever made or constructed for use, or ever sold, or are now making, or were at the time of the filing of the bill or amended bill making, constructing, using, or selling any packages of preserved meats, using said supposed improvement described in said pretended patents, or substantially like thereto, or upon a plan or principle or an imitation thereof, or embracing in said packages, or either of them, the
69 whole or one or more of said supposed inventions or improvements contained as alleged in said several pretended letters patents number 6370 and number 5451, Division A, or that the said de-

fendants, or either of them, have persisted in so doing, or refused to desist, or that they have ever been warned or requested so to do.

And these defendants deny that any injury has resulted to said complainants, or either of them, or that great gains or profits have accrued to these defendants in manner and form as in said bill alleged, or that any accounting is due from these defendants or either of them to said complainants or either of them as claimed.

And, further answering in this behalf as to the said supposed and pretended patented improvement for which letters are claimed to have been issued to the said William J. Wilson, March 31st, 1874, and alleged to have been assigned to the said Wilson Packing Company, and for which, as in said bill alleged, reissued letters patent were granted to the said Wilson Packing Company, number 6370, these defendants say it is not true that said William J. Wilson was at the time
70 alleged, or at any time, the true, original, or first inventor of the said supposed and pretended improvement in the said bill mentioned in manner and form as the complainants have in their said bill alleged.

And these defendants further say that the said supposed and pretended invention in the said bill mentioned, and for and in respect to which the said original letters patent were so made as alleged, and assigned as alleged by the said Wilson to the said Wilson Packing Company, or for which the said reissued letters patents number 6370, were granted as alleged, was not, at the time of making said letters patent, in manner and form a new invention as to the public use and exercise thereof; but as these defendants say, the said supposed process and supposed patented improvement was, long previous to said pretended discovery, and to the granting of said letters patent and each of them, well known and in common use in the United States, in Canada, in the Kingdom of Great Britain, and also in France and Germany, in Europe and in Australia, and elsewhere. And also as to said pretended improvement for which
71 letters patent are claimed to have been issued to the said William C. Marshall July 12th, 1864, and alleged to have been assigned to the said Arthur A. Libby, and for which, as in said bill alleged, reissued letters patent were granted to the said Arthur A. Libby, assigned as claimed, number 6451, division A, and number 6452, division B, these defendants say it is not true that the said William C. Marshall was at the time alleged, or at any time, the true, original, or first inventor of the said pretended improvement in the said bill mentioned to have been by him, the said Marshall, invented and discovered in manner and form as the said complainants have in said bill alleged.

And these defendants further say that the last named supposed and pretended invention in the said bill mentioned for and in respect to which said original letters patent were so made to said Marshall as alleged, and assigned, as alleged, and for which the said reissued letters patent numbered 6451 division A, and number 6452 division B, were granted as alleged at the time of making the said letters patent,
72 was not a new invention as to the public use and exercise thereof; but, as these defendants say the said alleged processes and pretended improvements, long previous to said pretended discovery or invention, and long previous to the granting of said letters patent was well known and in common use both in the United States, Canada, in the Kingdom of Great Britain, in France, and elsewhere in Europe and in Australia.

And these defendants say that the state of the art of preserving and packing meats and cooked meats was, at the time of said several

pretended discoveries of the said Wilson, and of the said Marshall, of the supposed improvements in the said bill claimed for them, respectively, such throughout the United States and Europe that the process as in said pretended improvements respectively described and the said schedules to the said several letters set forth, was of common knowledge and in daily use, not only among the manufacturers and packers of meats and cooked meats, but in the households of the people, and that the said pretended improvements, and each of them, and the said application for the said letters patent, and each of them, was a mere attempt
73 by the said Wilson, and the said Marshall, respectively, to appropriate to himself a process that had become common and well understood, and easily attainable by those desiring to practice the same.

And these defendants further say, that the said several pretended improvements and processes claimed to have been discovered by the said Wilson, and the said Marshall, respectively, have been described in public works long anterior to the supposed and alleged discovery thereof, by the said Wilson, and the said Marshall, respectively, and these defendants say that the same and each of them had been published in the work styled Tomlinson's Encyclopædia, volume I, page , article "Food," long anterior to the supposed and alleged discovery of the said Wilson, or the said Marshall.

And these defendants say that a description of the said alleged improvements and each of them had been published in a work styled "Ure's Arts and Manufactures," vol. I, page , article, "Putrefaction," long anterior to the supposed and alleged discoveries by the said Wilson, or the said Marshall, or either of them.

74 And these defendants further say, that the said pretended inventions, improvements, and processes claimed by the said complainants, had been described, and a description thereof published in a work styled Abridgement of Specifications relating to Preservation of Food, a book published by George E. Eyre, and William Spottswood, of London, England, in 1858, long anterior to said alleged improvements, and each of them, particularly under the specifications of the patent of Ludwig Granholm, at page 5, patented August 5th, A. D. 1817, numbered 4150; also the patent of Henry Gunter, at page 12, dated January 6th, 1841, number 8776; also the patent of Jean Worthly, at page 39, patented February 20th, A. D. 1855, number 375; also the patent of C. M. de Kermval, at page 36, dated August 26th, 1854, number 1874; also the patent of George Masmyth, at page 39, dated February 21st, 1855, number 381; also the patent of Peter Durand, at page 4, granted August 25th, 1810, #3372.

And these defendants further say, that said supposed improvements and discoveries, and each of them in said bill described and referred to, are the same process for which letters patent were heretofore, and before the time of said pretended discoveries and inventions
75 in said bill mentioned, as these defendants are informed and believe, granted by the Kingdom of Great Britain, to Ludwig Granholm, August 5th, A. D. 1817, number 4150; also the same for which said Kingdom of Great Britain granted letters patent to Henry Gunter, dated January 6th, 1841, number 8776; also the same for which said Kingdom of Great Britain granted letters patent to Jean Worthly, dated February 20th, A. D. 1855, number 375; also the same for which said Kingdom of Great Britain granted letters patent to C. M. P. de Kermval, dated August 26th, 1854, No. 1874; also the same for which said Kingdom of Great Britain granted letters patent to George

Masmyth, dated February 21st, 1855, number 381; also the same for which said Kingdom of Great Britain granted letters patent to Peter Durand, of Hoxston Square, county of Middlesex, England, dated August 25th, 1810, number 3372; also for which letters patent of the Kingdom of Great Britain were granted to R. A. Rabroomon, A. D. 1856, number 2637; also the same for which French letters patent were heretofore granted to M. Appert in 1810, exact date and number not known; also the same for which said United States
76 granted letters patent to Isaac Winslow, dated April 8th, 1862, No. 34928. Also letters patent to said Winslow, dated May 13th, 1862, No. 35274. And these defendants further say that prior to the supposed inventions thereof, by the said patentees named, or either of them, substantially the same thing as each of said patents described had been shown in certain other printed publications as follows: The American Family Encyclopædia of Useful Knowledge, or Book of 7,223 Receipts and Facts, by F. Webster and M. Parkes, edited by D. W. Rees, published in New York City, by J. C. Duty, in 1856, upon pages 784, 785, and 786 thereof; said book being designated on the cover thereof as Webster's American Encyclopædia. Also in the New American Encyclopædia, a popular Dictionary of General Knowledge, published in New York City, by D. Appleton & Co., in the year 1861, in volume 13, under title "Preservation of Food." Also for which many other letters patent have been by said Kingdom of Great Britain, by France, and by said United States granted, at various times prior to said several supposed inventions in said bill mentioned, to various persons whose names, and the dates and numbers of whose said letters
77 patent, defendants ask leave to state in a supplement hereto, when discovered.

And these defendants further say they are informed and believe, and so state, that the said process and pretended improvement claimed by said Wilson and said Marshall respectively, and for which said several letters patent were granted to them, was heretofore and prior to said granting of said letters, or either of them, well known to John H. Kemp and Day, copartners as Kemp & Day, at number 100 Murray street in the city of New York, State of New York, United States, and also to W. H. Dudley, of same city, who then and there, and also at Portland, Maine, prior to the granting of said letters to said Wilson and said Marshall, or either of them, practiced the said pretended improvements at said city and elsewhere, as can be proven by said John H. Kemp and said Day, and John Irvin and Aaron K. Larabee, witnesses living or residing at said city of New York, and F. A. Wadem, residing at Chicago, Illinois.

And the said supposed improvements were each of them also known to John Romain and by him practiced in the United States, at number 141 West street, New York City, State of New York, and in Long Island City, Queens County New York, prior to granting said letters or
78 either of them, as can be proven by John Romain as witness residing at said city of New York, and William A. Henderson, residing at Long Island City, New York.

That the supposed improvement, prior to the pretended discovery of the said Wilson and the said Marshall, was also known to the Portland Packing Company, of Portland, Maine, and by them practiced in the United States at Portland, in the State of Maine, as can be proven by William G. Davis and J. P. Baxter, witnesses residing at said city of Portland, and that the supposed improvement, prior to the pretended discovery of the said Wilson and the said Marshall, was well known to

Rumery and Burnham, a copartnership; also W. K. Lewis & Co. and J. Wilson Jones, and by them practiced in the United States at Portland, Maine, as can be proven by John C. Merry, residing at Elgin, Illinois, and F. A. Wadem, residing at Chicago, Illinois, and said Rumery, Burnham, and Jones, at Portland, Maine.

Further answering, and in support of their allegation that the said Wilson and Marshall were not the first and original inventors of the pretended improvements patented to them severally, as in said bill alleged, these defendants aver that long anterior to the date of the pretended discovery by the said Marshall or Wilson, or either of
79 them, the said pretended improvements, and each of them, were fully described in a certain public work entitled the Scientific American, published by Munn & Co., at the city of New York, in the year 1849, and in volume five (5) at page eighty-one (81) thereof, and in an article entitled "To Preserve Meat for Voyages"; also in said work published in the year 1851, and in volume seven (7) at page three hundred and twenty-five (325) thereof, and in an article entitled "Preservation of Meats"; also that long anterior to said pretended discovery by the said Marshall or Wilson, or either of them, the improvements patented to them, respectively, were well known to and practiced by and the product thereof largely sold by Stephen A. Provost, at the city of New York, State of New York, and at Clay City, in the State of Illinois, and also by Charles A. Felding, at said Clay City, which facts these defendants expect to show by the testimony of said Stephen A. Provost, residing at the city of New York, and having his place of business at No. 226 Front street, in said city, by the testimony of said Charles A. Felding, at said Clay City, and of William A. Jordan, residing at Morris, State of Illinois.

And that said supposed improvements, prior to said pretended
80 improvements by said Wilson or said Marshall, or either of them, was known to, practiced by, and product sold by Munson, Thomas & Co., a firm at Baltimore, Maryland, as can be proven by F. A. Wardem, residing at Chicago, Illinois.

And that said supposed improvements, and each of them, were, prior to granting by the United States said letters patent, or either of them, to said William J. Wilson or said William C. Marshall, well known to and practiced by numerous other persons, copartnerships, and corporations, at different places in the United States, the names of which persons so making prior use of said supposed improvements and the witnesses by whom the same may be proven, although now unknown to defendants, they will seek out and ask leave, when discovered, to mention in a supplemental or amended answer, and may be allowed to amend and rely on at the hearing.

And these defendants, further answering, admit that the said defendant Robert D. Hunter is, and was, at the bringing of the said bill, and at the time of the service of process upon him, president of the St. Louis Beef Canning Company, but these defendants say that the said Robert D. Hunter, as president of the said company, had not
81 then, or has he now, his office or place of business at East St. Louis, in the State of Illinois; and these defendants admit that H. B. Merrill, at the time of the exhibiting of the original bill in this cause, and service of process on him, was secretary of the said defendant corporation, but say that he did not ever, as said secretary, have an office or place of business in the city of East St. Louis, in the State of Illinois.

These defendants further say that Henry L. Newman was not treas-

urer of said corporation at the commencement of this suit, nor had any office as such officer at the city of East St. Louis, in the State of Illinois.

These defendants admit that the said Robert D. Hunter, H. B. Merrill, and Henry L. Newman were directors of the corporation at the time stated, but say that they were not the only managers of its affairs; and defendants say that the said corporation has no stock-yard at East St. Louis, nor has in any manner, either through the said defendants or otherwise, or at any time, or for the defendants, or either of them,
82 used, or caused to be used, the pretended invention in said bill set forth, in making packages of preserved meats, or otherwise, or at any place.

And these defendants, further answering, say they have already stated all they are informed, or believe, as to issuing said letters patent; and as to said second interrogatory, annexed to said bill, defendants say they have not, individually or officially, made or sold packages of packed meats, but that said corporation defendant has, as defendants say, under different letters patent from those set up in said bill, and which belong to said defendants, and as to how many and what profits these defendants are not sufficiently informed to establish belief.

And these defendants, further answering, severally deny all and all manner of unlawful combination or confederacy wherewith they, or either of them, are charged by said bill, without this, that there is any other matter, cause, or thing in said complainants' said bill mentioned or necessary for these defendants, or either of them, to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, and denied, is true, to the knowledge or belief of these defendants, or either of them; and all which matters and things
83 these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

NOBLE & ORRICK,
Defts' Sol's.

BLUFORD WILSON,
Of Counsel.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Robert D. Hunter and Henry B. Merrill, being duly sworn, on their several oaths, say that all the several matters and things which are set forth in the foregoing answer, as on information, defendants believe to be true, and all matters therein set forth are true.

ROBERT D. HUNTER.
HENRY B. MERRELL.

Sworn to and subscribed before me this 30th day of January, A. D. 1878, at office in the city of St. Louis, Mo., by said affiants, Robert D. Hunter and Henry B. Merrell.

[L. S.] F. A. WERNER,
Commissioner U. S. Circuit Court, Eastern Dist. of Missouri.

I, M. M. Price, clerk of the circuit court of the United States
84 in and for the eastern district of Missouri, certify that F. A. Werner, whose name is subscribed to the foregoing jurat, is a commissioner of this court, and that the signature to said jurat is in his handwriting.

Witness my hand and the seal of said court at office in the city of St. Louis this 31st day of January, A. D. 1878.

[L. S.] M. M. PRICE, *Clerk*,
By A. P. SELBY, *D. C.*

(Endorsed:) Filed February 2d, 1878. J. A. Jones, cl'k.

And afterwards, to wit, on the 13th day of March, in the year last aforesaid (1878), came the complainants, by their solicitor, and filed in said clerk's office their replication in said cause, which said replication is in the words and figures following, to wit:

Replication.

Circuit court of the United States, southern district of Illinois.

85 THE WILSON PACKING COMPANY, Arthur A. Libbey, Archibald McNiel, & Chas. P. Libby
vs.
ROBERT D. HUNTER, H. B. MERRILL, AND Henry L. Newman. } In equity.

The replication of the Wilson Packing Company, Arthur A. Libby, Archibald McNiel, & Chas. P. Libby, complainants, to the answer of Robert D. Hunter, H. B. Merrill, and Henry L. Newman, defendants.

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto say that they will aver and prove their said bill to be true, certain, and sufficient in law to be answered unto, and the said answer of the defendants is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by
86 their said bill they have already prayed.

GOODWIN, OFFIELD & TOWLE,
Complainants' Solicitors.

(Endorsed:) Filed March 13, 1878. J. A. Jones, clerk.

And afterwards, to wit, on the 5th day of March, in the year of our Lord one thousand eight hundred and seventy-nine, came the St. Louis Beef Canning Company, one of said defendants, and filed in said clerk's office its answer in said cause, which said answer is in the words and figures following, to wit:

Answer of St. Louis Beef Canning Co.

UNITED STATES OF AMERICA,
Southern District of Illinois:

In the United States circuit court in and for the said southern district, in chancery.

THE WILSON PACKING COMPANY ET AL., complainants,
vs.
87 THE ST. LOUIS BEEF CANNING COMPANY et al., defendants.

The answer of the St. Louis Beef Canning Company, one of the defendants, to the amended bill of complaint of the Wilson Packing Company, Arthur A. Libby, Archibald McNiel, and Charles P. Libby, complainants.

This defendant, now and at all times hereafter, saving to itself all and singular all manner of benefit of advantage of exception or otherwise, that can or may be had or taken, of the many errors and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised is material or necessary for them to make answer to, answering, says:

That by no alleged assignment or agreement in writing, recorded, as alleged, in the Patent Office, are said complainants, or have they been since July 17, 1875, or before said date, the sole and exclusive owner of said alleged letters patent No. 6370 and No. 6451, Division A, or either of them, of any of the pretended rights or privileges purported to be secured thereby. And this defendant says that no legal title is
88 vested in said Wilson Packing Co. in trust for themselves and said other complainants, in manner and form as in said bill stated by said alleged writing.

And this defendant says that by a certain instrument in writing, dated July 17, 1875, and recorded in said Patent Office, and which purports to be an assignment by said Arthur A. Libby, complainant, only of any right, title, and interest he may have in said letters patent No. 6451, Division A, and No. 6452, Division B, and which this defendant says is the only instrument in writing, assignment, or agreement referred to, or intended to be referred to, by complainant in this behalf, as defendant is informed and believes, and so says, no trust was or is created or intended to be created in favor of said complainants Archibald McNiel and Charles P. Libby. And this defendant says that neither by the said instrument in writing, nor in any other manner or in any way have said last-named complainants or either of them acquired or become vested with any right, title, or interest, legally or equitably, in the said alleged letters patent, or either of them, nor in any supposed right or privilege purporting to be thereby granted, or either of them.

89 And this defendant says that the said Archibald McNiel and Charles P. Libby are illegally and improperly joined as complainants in said bill with the said Wilson Packing Company and Arthur A. Libby, as are also the said Wilson Packing Co. and the said Arthur A. Libby illegally and improperly joined with the said Archibald McNiel and Charles P. Libby as complainants in the said bill, the one with the other.

And this defendant does now insist, and shall at all times insist, upon said misjoinder as a defense to the whole of said bill.

This defendant, further answering, says it is informed and believes that on the 31st day of March, A. D. 1874, letters patent of the United States were issued to, and delivered to, said William J. Wilson for an alleged improvement in process for preserving and packing cooked meats, but defendant says the same were not for any actual improvement in fact, and said letters patent were not the same in manner and form alleged in said bill, and defendant asks that complainants may be required to produce, in support of said bill, said original letters,
90 if any there are, and defendant begs leave to refer thereto for greater certainty.

This defendant says it is not informed, otherwise than by said bill, whether any mesne assignment of said letters patent was made to said Wilson Packing Co., or recorded as alleged in the Patent Office, and cannot admit or deny the same; but defendant says that neither by any assignment or otherwise were said Wilson Packing Co. vested with any exclusive rights or privileges, or any interest in manner and form alleged.

And this defendant says it is not informed, save by said bill, and cannot admit or deny whether said William J. Wilson surrendered the letters patent alleged to have been surrendered by said bill in manner and form stated.

This defendant admits that on the 6th day of April, 1875, certain letters patent were granted and delivered to the said Wilson Packing Company, alleged therein to be assignees as stated, and were numbered 6370 as stated; but defendant says it is informed and believes that the said letters patent last named were not for the same invention
91 for which said original letters patent were issued, or for any invention or improvement in point of fact, or were said original letters patent for any invention or improvement in point of fact.

And this defendant says, as it is informed and believes, and so charges, the said last mentioned letters patent No. 6370, purporting to be a reissue for said certain other original letters patent, were not for the same supposed or pretended invention stated in said original letters patent surrendered therefor, or for any invention, but for another and different supposed or pretended invention from the supposed or pretended invention described in said original letters patent, as by a comparison of the said reissued letters patent and the schedule thereunto annexed, No. 6370, and dated April 6th, 1875, with said original letters patent, by this honorable court to be made, will fully appear, and that thereby, as this defendant says, the said reissued letters patent were, from the beginning, and now are, absolutely void on their face, and of no effect.

Defendant does not admit either the said original or reissued
92 letters patent were for any actual invention, improvement, or discovery, but avers, as aforesaid, they were not, nor was either of them, but that said reissued letters were for a different pretended invention from the supposed invention in said original letters set forth, as appears thereby.

This defendant, further answering, says it is informed and believes that on the 12th day of July, 1864, certain letters patent of the United States were issued and delivered to one William C. Marshall for a supposed improvement in the process of preserving meats, but these defendants say the said letters were not for any improvement in point of fact, nor were said letters for cooked meats as alleged, or the same in manner and form as stated in said bill, and this defendant asks that

the complainants may be required to produce said letters (if any there be), and begs leave to refer thereto for the contents and legal effect of the same when so produced by complainants.

This defendant says it has no information, save by said bill,
93 and cannot therefore admit or deny whether any mesne assignment was made to said Arthur A. Libby, or recorded as alleged in the Patent Office, but said defendant says said Libby was not invested with any exclusive rights or privileges, or any interest in manner and form alleged.

And this defendant says they are not informed, save by said bill, and therefore cannot admit or deny whether said William C. Marshall surrendered the letters patent alleged by said bill to have been surrendered in manner and form as stated.

This defendant admits that on the 25th day of May, 1875, certain letters patent were granted and delivered to the said Arthur A. Libby, alleged to be assignee as therein stated, which bore date as stated, and were numbered 6451, Division A, and 6452, Division B, but says said letters were not for cooked meats as alleged. But this defendant says it is informed and believes that the said reissued letters patent last named were not for the same supposed invention for which said original letters last named and referred to therein were issued, or for any
94 invention or improvement in point of fact, or were said original letters patent for any actual invention or improvement. And this defendant says, as it is informed and believes, and so charges, said last mentioned letters patent No. 6451, Division A, as well as said letters No. 6452, Division B, purporting to be a reissue for said certain other original letters patent, were not for the same supposed and pretended invention stated in said letters patent surrendered therefor, or for any invention in point of fact, but for another and different supposed and pretended invention described in said original letters, as by a comparison of said letters patent and the schedules thereunto annexed, dated May 25th, 1875, with said original letters and schedules thereunto annexed by this honorable court to be made will fully appear, and that thereby, as this defendant says, the said reissued letters patent of May 25th, 1875, from the beginning and now are absolutely void on their face, and of no effect. Defendant does not admit that either said original or reissued letters last named were for any invention, im-
95 provement, or discovery in point of fact, but avers they were not, or was either of them, but that said original letters last named were for a different pretended invention from the pretended invention in said original letters set forth.

And this defendant, further answering, denies that since the granting of said pretended letters patent, or either of them, the said pretended patentees, or either of them, or those acting under them, or either of them, have brought said supposed inventions, or either of them, into public use, at any place, in manner and form stated, and denies that the said pretended inventions, or either of them, are of great value to the patentees, or either of them, or those claiming under them, or said complainants.

This defendant says that said processes for preserving and packing cooked meats are, and have been, of great value to the people at large, and said processes this defendant avers, are the same described and referred to in complainants' bill, and which said complainants have attempted, by means of said pretended patents, to appropriate to
96 themselves, but denies that the processes or improvements are of any peculiar value to the complainants, or either of them, by

means of said letters patent, or either of them, or that said complainants have acquired any legal or equitable right thereto.

And defendant denies that the said supposed improvement in said processes, or either of them, have remained in the exclusive possession of said pretended patentees, or either of them, or those claiming under them, or either of them, or that the same, or either of them, have been of great benefit to the public, otherwise than as processes well understood and known before said letters patent were issued, and independent of said letters patent, or either of them, and denies that the same have been of great gain to the said patentees or assignees, by any rightful claim thereto, or otherwise than the illegal appropriation thereof; and denies that the said complainants, or either of them, have been deprived, by the acts of this defendant, of any gains whatever, lawful to have been enjoyed, or in any other manner as alleged in said bill.

And this defendant particularly denies that it, either at East St. Louis, in the said district of the State of Illinois, or elsewhere,
97 has or have ever used the said supposed inventions or things patented, as alleged, or ever made or constructed for use, or ever sold, or are now making, or were at the time of the filing of the bill or amended bill, making, constructing, using, or selling any packages of preserved meats, using said supposed improvements described in said pretended patents, or substantially like thereto, or upon a plan or principle or any imitation thereof, or embracing in said packages, or either of them, the whole or one or more of said supposed inventions or improvements contained as alleged in said several pretended letters patent No. 6370 and No. 5451, division A, or that the said defendant has persisted in so doing, or refused to desist, or that they have ever been warned or requested so to do.

And this defendant denies that any injury has resulted to said complainants, or either of them, or that great gains or profits have accrued to this defendant in manner and form as in said bill alleged, or that any accounting is due from this defendant to said complainants, or either of them, as claimed.

And further answering in this behalf as to the said supposed
98 and pretended patented improvements for which letters are claimed to have been issued to the said William J. Wilson, March 31st, 1874, and alleged to have been assigned to the said Wilson Packing Co., and for which, as in said bill alleged, reissued letters patent were granted to the said Wilson Packing Co. No. 6370; this defendant says it is not true that said William J. Wilson was, at the time alleged, or at any time, the true, original, or first inventor of the said supposed and pretended improvement in the said bill mentioned, in manner and form as the complainants have in their said bill alleged.

And this defendant further says that the said supposed and pretended invention in the said bill mentioned, and for and in respect to which the said original letters patent were so made as alleged and assigned as alleged by the said Wilson to the said Wilson Packing Co., or for which the said reissued letters patent No. 6370 were granted as alleged, was not at the time of making said letters patent in manner and form a new invention as to the public use and
99 exercise thereof; but as this defendant says the said supposed process and supposed patented improvement was, long previous to said pretended discovery, and to the granting of said letters patent, and each of them, well known and in common use in the United States, in Canada, in the Kingdom of Great Britain,

and also in France, and Germany, in Europe, and Australia, and elsewhere. And also, as to said pretended improvement for which letters patent are claimed to have been issued to the said William C. Marshall, July 12, 1864, and alleged to have been assigned to the said Arthur A. Libby, and for which as in said bill alleged, reissued letters patent were granted to the said Arthur A. Libby, assigned as claimed, No. 6451, division A, and 6452, division, B, this defendant says it is not true that the said William C. Marshall was, at the time alleged, or any time, the true, original, or first inventor of the said pretended improvement in the said bill mentioned to have been by him, the said Marshall, invented and discovered, in manner and form as the said complainants have in said bill alleged.

And this defendant further says, that the last named supposed
100 and pretended invention in the said bill mentioned, for and in respect to which said original letters patent were so made to said Marshall, as alleged, and assigned as alleged, and for which the said reissued letters patent, No. 6451, division A, and No. 6452, division B, were granted as alleged, at the time of making the said letters patent, was not a new invention as to the public use and exercise thereof; but as this defendant says, the said alleged processes and pretended improvements, long previous to said pretended discovery or invention, and long previous to the granting of said letters patent, was well known and in common use, both in the United States, Canada, in the Kingdom of Great Britain, in France, and elsewhere in Europe, and in Australia.

And this defendant says, that the state of art of preserving and packing meats and cooked meats, was at the time of said several pretended discoveries of the said Wilson, and of the said Marshall, of the supposed improvements in the said bill claimed for them, respectively, such throughout the United States and Europe, that the process as in
101 said pretended improvements respectively described, and the said schedules to the said several letters set forth, was of common knowledge, and in daily use, not only among the manufacturers and packers of meats and cooked meats, but in the households of the people, and that the said pretended improvements, and each of them, and the said application for the said letters patent and each of them, was a mere attempt by the said Wilson and the said Marshall, respectively, to appropriate to himself a process that had become common and well understood, and easily attainable by those desiring to practice the same.

And this defendant further says, that the said several pretended improvements and processes claimed to have been discovered by the said Wilson, and the said Marshall, respectively, have been described in public works long anterior to the supposed and alleged discovery thereof by the said Wilson and the said Marshall, respectively; and this defendant says, that the same, and each of them, had been published in the work styled Tomlinson's Encylcopædia, vol. 1, page , article "Food," long anterior to the supposed and alleged discovery of the said Wilson or the said Marshall. And this defendant
102 says, that a description of the said alleged improvements and each of them, has been published in a work styled "Ure's Arts and Manufactures," vol. 1, page , article "Putrefaction," long anterior to the supposed and alleged discoveries by the said Wilson or the said Marshall, or either of them.

And this defendant further says that the said pretended inventions, improvements, and processes claimed by the said complainants had

been described and a description thereof published in a work styled "Abridgement of Specification Relating to Preservation of Food," a book published by George E. Eyre and William Spottswood, of London, England, in 1857, long anterior to said alleged improvements, and each of them, particularly under the specifications of the patent of Ludwig Granholm, at page 5, patented August 5th, A. D. 1817, No. 4150; also the patent of Henry Gunter, at page 12, dated January 6, 1841, No. 8776; also the patent of Jean Worthly, at page 39, patented February 20th, A. D. 1855, No. 375; also the patent of C. M. de Kermval, at page 36, dated August 26th, 1854, No. 1874; also the patent of George Nasmyth, at page 29, dated February 21st, 1855, No. 381;
103 also the patent of Peter Durand, at page 4, granted August 25th, 1810, No. 3372.

And this defendant further says that said supposed improvements and discoveries, and each of them, in said bill described and referred to are the same process for which letters patent were heretofore, and before the time of said pretended discoveries and inventions in said bill mentioned, as these defendants are informed and believe, granted by the Kingdom of Great Britain to Ludwig Granholm, August 5th, A. D. 1817, No. 4150; also the same for which said Kingdom of Great Britain granted letters patent to Henry Gunter, dated January 6th, 1841, No. 8776; also the same for which said Kingdom of Great Britain granted letters patent to Jean Worthly, dated February 20th, A. D. 1855, No. 375; also the same for which said Kingdom of Great Britain granted letters patent to C. M. P. de Kermval, dated August 26, 1854, No. 1874; also the same for which said Kingdom of Great Britain granted letters patent to George Nasmyth, dated February 21, 1855, № 381; also the same for which said Kingdom of Great Britain granted letters patent to Peter Durand, of Hoxston Square, county of Middlesex, England, dated August 25, 1810, № 3372; also for which
104 letters patent of the Kingdom of Great Britain were granted R. A. Radbrooman, A. D. 1856, № 2637; also the same for which French letters patent were heretofore granted to M. Appert in 1810, exact date and number not known; also the same for which said United States granted letters patent to Isaac Winslow, dated April 8th, 1862, № 34928; also letters patent to said Winslow, dated May 13, 1862, № 35274.

And this defendant further says that prior to the supposed inventions thereof by the said patentees named, or either of them, substantially the same thing as each of said patents described had been shown in certain other printed publications, as follows: "The American Family Encyclopœdia of Useful Knowledge, or Book of 7223 Receipts and Facts," by T. Webster and M. Parkes, edited by D. W. Reese, published in New York City by J. C. Duty in 1856, upon pages 784, 785, and 786 thereof, said book being designated on the cover thereof as "Webster's American Encyclopœdia; also in the "New American Encyclopœdia," a popular Dictionary of General Knowledge, published in New York City by D. Appleton & Co. in year 1861, in vol. 13, under title, "Preservation of Food;" and, also, for which many other letters patent
105 have been by said Kingdom of Great Britain, by France, and by said United States granted, at various times prior to said several supposed inventions in said bill mentioned, to various persons, whose names and the dates and numbers of whose said patents defendant asks leave to state in a supplement hereto when discovered.

And this defendant further says they are informed and believe, and so state, that the said process and pretended improvement claimed by

said Wilson and said Marshall respectively, and for which said several letters patent were granted to him, was heretofore and prior to said granting of said letters, or either of them, well known to John H. Kemp and Day, copartners as Kemp and Day, at number 100 Murray street, in the city of New York, State of New York, United States. And also to W. H. Dudley, of same city, who then and there and also at Portland, Maine, prior to the granting of said letters to said Wilson and said Marshall, or either of them, practiced the said pretended improvement, at said city and elsewhere, as can be proven by said John H. Kemp and said Day and John Irwin and Aaron
106 K. Larabey, witnesses living or residing at said city of New York, and F. A. Wadum, residing at Chicago, Illinois. And the said supposed improvements were each of them also known to John Romain, and by him practiced in the United States, at number 141 West street, New York City, State of New York, and in Long Island City, Queens County, New York, prior to granting said letters, or either of them, as can be proven by John Romain as witness, residing at said city of New York, and William A. Henderson, residing at Long Island City, New York.

That the supposed improvement, prior to the pretended discovery of the said Wilson and the said Marshall, was also known to the Portland Packing Company, of Portland, Maine, and by them practiced in the United States at Portland, Maine, as can be proven by William G. Davis and J. P. Baxter, witnesses residing at said city of Portland. And that the supposed improvement prior to the pretended discovery of the said Wilson and the said Marshall was well known to Rumery and Burnham, a copartnership. Also W. K. Lewis & Co. and J. Winslow Jones, and by them practiced in the United States at
107 Portland, Maine, as can be proven by John C. Merry, residing at Elgin, Illinois, and F. A. Wadun, residing at Chicago, Illinois, and said Rumery, Burnham, and Jones, at Portland, Maine. And that said supposed improvements by said Wilson or said Marshall or either of them, was known to, practiced by, and product sold by Munson, Thomas & Co., a firm at Baltimore, Maryland, and can be proven by F. A. Wadner, residing at Chicago, Illinois.

Further answering, and in support of the allegation that the said Wilson and Marshall were not the first and original inventors of the pretended improvement patented to them severally, as in said bill alleged, defendant avers that long anterior to the date of the pretended discovery by the said Marshall or Wilson, or either of them, the said pretended improvements, and each of them, were fully described in a certain public work entitled the "Scientific American," published by Munn & Co., at the city of New York, in the year 1849, and in volume five (5), at page eighty-one (81) thereof, and in an article entitled, "To preserve meat for voyages." Also in said work published in the year 1851, and in volume seven (7), at page three hundred and twenty-five (325) thereof, and in an article entitled "Preservation of meats."
108 Also, that long anterior to said pretended discovery by the said Marshall or Wilson, or either of them, the improvements patented to them respectively, were well known to and practiced by, and the product thereof largely sold by Stephen A. Provost, at the city of New York, State of New York, and at Clay City, in the State of Illinois, and also by Charles A. Felding, at said Clay City; which facts this defendant expects to show by the testimony of said Stephen A. Provost, residing in the city of New York, and having his place of

business at No. 226 Front street, in said city, by the testimony of said Charles A. Felding, residing at said Clay City, and of William H. Jordan, residing at Morris, State of Illinois. And that said supposed improvements and each of them were, prior to granting by the United States said letters patent, or either of them, to said William J. Wilson or said William C. Marshall, well known to and practiced by numerous other persons, copartnerships, and corporations, at different places in the United States, the names of which persons, so making prior use of said supposed improvements, and the witnesses by whom the same may be proven, although now unknown to defendant, we will
109 seek out and ask leave when discovered, to mention in a supplemental or amended answer, and may be allowed to amend and rely on at the hearing.

And this defendant, further answering, admits that Robert D. Hunter is and was at the bringing of the said bill, president of the St. Louis Beef Canning Co., but this defendant says that the said Robert D. Hunter, as president of the said company, had not then, nor has he now, his office or place of business at East St. Louis, in the State of Illinois; and this defendant admits that H. B. Merrell, at the time of the exhibiting of the original bill in this cause, was secretary of the said defendant corporation, but say that he did not ever, as said secretary, have an office or place of business in the city of East St. Louis, in the State of Illinois.

This defendant further says that Henry L. Newman was not treasurer of said corporation at the commencement of this suit, nor had any office as such officer, at the city of East St. Louis, in the State of Illinois.

Defendant admits that the said Robert D. Hunter, H. B. Merrell, and Henry L. Newman were directors of this corporation at the time
110 stated, but say that they were not the only managers of its affairs; and defendant says that the said corporation has no stock-yard at East St. Louis, or has in any manner, either through the said Robert D. Hunter, H. B. Merrell, and Henry L. Newman, or otherwise, or at any time, or for them or either of them, used or caused to be used, the pretended invention in said bill set for' in making packages of preserved meats, or otherwise, or at any place.

And this defendant, further answering, says it has already stated all it is informed or believes as to issuing said letters patent; and as to said interrogatory annexed to said bill, defendant says it has not made or sold packages of packed meats, but that said corporation defendant has, under different letters patent from those set up in said bill, and which belong to said defendant, and as to how and what profits, defendant is not sufficiently informed to establish a belief.

And this defendant, further answering *duly* all and all manner of unlawful combination or confederacy wherewith it is charged by said bill, without this, that there is any other matter, cause, or
111 thing in said complainants' said bill mentioned, or necessary for this defendant to make answer to, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided and denied, is true to the knowledge or belief of this defendant. And all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly

said Wilson and said Marshall respectively, and for which said several letters patent were granted to him, was heretofore and prior to said granting of said letters, or either of them, well known to John H. Kemp and Day, copartners as Kemp and Day, at number 100 Murray street, in the city of New York, State of New York, United States. And also to W. H. Dudley, of same city, who then and there and also at Portland, Maine, prior to the granting of said letters to said Wilson and said Marshall, or either of them, practiced the said pretended improvement, at said city and elsewhere, as can be proven by said John H. Kemp and said Day and John Irwin and Aaron
106 K. Larabey, witnesses living or residing at said city of New York, and F. A. Wadum, residing at Chicago, Illinois. And the said supposed improvements were each of them also known to John Romain, and by him practiced in the United States, at number 141 West street, New York City, State of New York, and in Long Island City, Queens County, New York, prior to granting said letters, or either of them, as can be proven by John Romain as witness, residing at said city of New York, and William A. Henderson, residing at Long Island City, New York.

That the supposed improvement, prior to the pretended discovery of the said Wilson and the said Marshall, was also known to the Portland Packing Company, of Portland, Maine, and by them practiced in the United States at Portland, Maine, as can be proven by William G. Davis and J. P. Baxter, witnesses residing at said city of Portland. And that the supposed improvement prior to the pretended discovery of the said Wilson and the said Marshall was well known to Rumery and Burnham, a copartnership. Also W. K. Lewis & Co. and J. Winslow Jones, and by them practiced in the United States at
107 Portland, Maine, as can be proven by John C. Merry, residing at Elgin, Illinois, and F. A. Wadun, residing at Chicago, Illinois, and said Rumery, Burnham, and Jones, at Portland, Maine. And that said supposed improvements by said Wilson or said Marshall or either of them, was known to, practiced by, and product sold by Munson, Thomas & Co., a firm at Baltimore, Maryland, and can be proven by F. A. Wadner, residing at Chicago, Illinois.

Further answering, and in support of the allegation that the said Wilson and Marshall were not the first and original inventors of the pretended improvement patented to them severally, as in said bill alleged, defendant avers that long anterior to the date of the pretended discovery by the said Marshall or Wilson, or either of them, the said pretended improvements, and each of them, were fully described in a certain public work entitled the "Scientific American," published by Munn & Co., at the city of New York, in the year 1849, and in volume five (5), at page eighty-one (81) thereof, and in an article entitled, "To preserve meat for voyages." Also in said work published in the year 1851, and in volume seven (7), at page three hundred and twenty-five (325) thereof, and in an article entitled "Preservation of meats."
108 Also, that long anterior to said pretended discovery by the said Marshall or Wilson, or either of them, the improvements patented to them respectively, were well known to and practiced by, and the product thereof largely sold by Stephen A. Provost, at the city of New York, State of New York, and at Clay City, in the State of Illinois, and also by Charles A. Felding, at said Clay City; which facts this defendant expects to show by the testimony of said Stephen A. Provost, residing in the city of New York, and having his place of

business at No. 226 Front street, in said city, by the testimony of said Charles A. Felding, residing at said Clay City, and of William H. Jordan, residing at Morris, State of Illinois. And that said supposed improvements and each of them were, prior to granting by the United States said letters patent, or either of them, to said William J. Wilson or said William C. Marshall, well known to and practiced by numerous other persons, copartnerships, and corporations, at different places in the United States, the names of which persons, so making prior use of said supposed improvements, and the witnesses by whom the same may be proven, although now unknown to defendant, we will
109 seek out and ask leave when discovered, to mention in a supplemental or amended answer, and may be allowed to amend and rely on at the hearing.

And this defendant, further answering, admits that Robert D. Hunter is and was at the bringing of the said bill, president of the St. Louis Beef Canning Co., but this defendant says that the said Robert D. Hunter, as president of the said company, had not then, nor has he now, his office or place of business at East St. Louis, in the State of Illinois; and this defendant admits that H. B. Merrell, at the time of the exhibiting of the original bill in this cause, was secretary of the said defendant corporation, but say that he did not ever, as said secretary, have an office or place of business in the city of East St. Louis, in the State of Illinois.

This defendant further says that Henry L. Newman was not treasurer of said corporation at the commencement of this suit, nor had any office as such officer, at the city of East St. Louis, in the State of Illinois.

Defendant admits that the said Robert D. Hunter, H. B. Merrell, and Henry L. Newman were directors of this corporation at the time
110 stated, but say that they were not the only managers of its affairs; and defendant says that the said corporation has no stock-yard at East St. Louis, or has in any manner, either through the said Robert D. Hunter, H. B. Merrell, and Henry L. Newman, or otherwise, or at any time, or for them or either of them, used or caused to be used, the pretended invention in said bill set for' in making packages of preserved meats, or otherwise, or at any place.

And this defendant, further answering, says it has already stated all it is informed or believes as to issuing said letters patent; and as to said interrogatory annexed to said bill, defendant says it has not made or sold packages of packed meats, but that said corporation defendant has, under different letters patent from those set up in said bill, and which belong to said defendant, and as to how and what profits, defendant is not sufficiently informed to establish a belief.

And this defendant, further answering *duly* all and all manner of unlawful combination or confederacy wherewith it is charged by said bill, without this, that there is any other matter, cause, or
111 thing in said complainants' said bill mentioned, or necessary for this defendant to make answer to, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided and denied, is true to the knowledge or belief of this defendant. And all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly

prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

[L. S.] NOBLE & ORRICK,
Def'ts Sol's.

JOHN W. NOBLE.
BLUFORD WILSON,
Counsel.

EASTERN DISTRICT OF MISSOURI:

Henry L. Newman, being duly sworn, on his oath says he is president of said defendant the St. Louis Beef Canning Company, and that affiant has heard read the foregoing answer, and that the matters therein as stated are true, save when stated on information & belief, and as to these matters affiant believes said matters to be true;
112 and affiant says said seal annexed is the seal of said coporation & is annexed hereto by authority of said corporation.

HENRY L. NEWMAN.

Subscribed and sworn to before me this 27th day of February, 1879.
C. M. WARD,
U. S. Com'r Eastern Dist. Mo.

UNITED STATES OF AMERICA,
Eastern District of Missouri:

I, M. M. Price, clerk of the circuit court of the United States in & for said eastern district of Missouri, certify that C. M. Ward, whose name is subscribed to the foregoing affidavit is & was at the date thereof a commissioner of this court; that his acts as such commissioner are entitled to due faith and credit; and I further certify that his signature to said affidavit is in his own handwriting.

Witness my hand, and seal of said court at office, in the city of St Louis, this 27th day of February, A. D. 1879.

[L. S.] M. M. PRICE,
U. S. Ct. Ct. Clerk.

(Endorsed:) Filed March 5th. A. D. 1879. J. A. Jones, clerk.

113 And afterwards, to wit, on the 5th day of May, in the year last aforesaid, came the said Robert D. Hunter and H. B. Merrill and the said St. Louis Beef Canning Company, defendants, by their solicitors, and filed in said clerk's office their supplemental answers in said cause, which supplemental answers are in the words and figures following, to wit:

Supplemental answer of Hunter & Merrill to amended bill.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

In the United States circuit court in and for said southern district. In chancery.

THE WILSON PACKING CO., COMPLAINANTS,
vs.
ROBERT D. HUNTER ET AL., DEFENDANTS.

The supplemental answer of Robert D. Hunter and H. B. Merrill, two of said defendants, to complainants' amended bill.

114 These defendants, yet reserving to themselves all right of exception to said amended bill of complaint, by leave of court, first

duly had, for further answer thereto, say on information and belief that the things patented in the said several letters patent, and each of them, in the said bill of complaint alleged and set forth, or some substantial and material part or parts thereof claimed as new were, anterior to the alleged or any discovery or invention thereof, or any substantial or material part thereof, by the patentees, or either of them, were patented or described and published in the following patents, viz:

English patent No. 8874, issued to John Wertheimer March 8th, 1841. English letters patent No. 231, issued to A. M. Fatio and F. Verdul January 31st, 1854.

English letters patents No. 2422, issued to J. J. B. S. M. de Signae October 30th, 1855. English letters patent No. 9312, issued to John Bevan April 6th, 1842.

Letters patent of the United States No. 138502, issued to W. C. King May 6th, 1873.

Letters patent of the United States No. 138735 issued to D. Chalhonor May 13th, 1873. Letters patent of the United States No. , issued to Ezra Daggutt and Thomas Kensett January 19th, 1825.

115 And these defendants, further answering upon information and belief, say that the things patent in the said several letters patent, or some substantial or material parts thereof, claimed as new were, anterior to the alleged invention thereof by the said several patentees, or any of them, shown and described in the following printed publications, viz:

Scientific American, a journal published in New York City, vol. 5, page 81, A. D. 1849, and vol. 7, page 325, A. D. 1851.

Tomlinson's Encyclopœdia, published by George Virtue & Co., London & New York, 1852, vol. 1, pp. 703, 708.

The London Herald, a journal published in London, England, the Nos. for June 10th & June 19th, A. D. 1865. Title of article, "The preservation of food, especially fresh meat and fish."

Le Liver de tous des Minogas on l'art de conserver pendant plusieurs années toutes les substance animals et vegeta'les, published in Paris, France, fourth edition, 1831.

Description des Brevets d'Invention, Paris, France, vol. 70, page 491, 1839, (1st series.) French patent 9881, July 25th, 1839, to Bertram & Feydeau. The same, vol. 44, page 289, 1855, (2d series.)

116 French patent, 2667, April 7th, 1855, to Martin de Signae. The same, vol. 84, page 235, 1839, (1st series.)

French patent, 11,613, July 17th, 1839, to Louis Amedee Fastier. Le Consexvatoire le Livre de tous les Minogas par Appert, 5th edition, 1858, Paris, France. Depot de Librairee, pages iii, x, xiii. Introduction, pages 47, 50, 59, 60. Serie de tous les minages. And in the following publications, viz:

Repertory of Arts, vol. 32, 2d series, page 196. London, printed for J. Wyett, Repertory office, Hatton Garden, 1818.

Rees's Cyclopedia, vol. 28, provisions, preservation of.

The Cyclopedia or Universal Dictionary of Arts, Science, & Literature, volume 28, published London, 1819. Printed for Longman, Hurst, Rees, Orme, & Brown, Patermaster Row.

And these defendants, further answering, state on information and belief, that the said alleged invention and things patented and claimed in and by the said several letters patent were in public use or on sale in this country for more than two years anterior to any application for the said several original patents, or either of them, by the said

117 respective patentees, with their consent and allowance, and that

they were known and used by, prior to the date of the respective patents—

William Archdeacon, who now resides at Transit House, Union Stock Yards, in Cook County, Illinois.

New York & Texas Beef Preserving Co. and Allen, Poole & Co., in Galveston, Texas, which will be proved by Numroe, whose residence is now unknown.

V. A. Poole, who now resides in Galveston, Texas.

Gray, who now resides in Chicago, Illinois.

J. D. Grinnell, who now resides in Dufield, Massachusetts.

Edward Connorty, who now resides at Pooleville, Galveston, Texas.

Mrs. Edward Connorty, who now resides at Pooleville, Galveston, Texas.

N. B. Robinson, now residing at Galveston, Texas.

Colonel E. McLain, Charles Stroden, Sam. Frazier, George Depmore, Frank Miller, all now residing in Galveston, Texas.

That Dr. M. Pearl canned meat, using substantially the same process, and making substantially the same product as that described and claimed in the above patents enumerated, and was succeeded
118 by Hutchison & Clapp, at Houston, in the State of Texas, long prior to the alleged inventions above specified, and the same will be proved by Dr. M. Pearl, Albert Flengal, Charles Sherman, and John Shubert, all now residing at Houston, in the State of Texas aforesaid, and Andrew McE. Duncan, of Chicago, now temporarily at Hannibal, Missouri.

H. Lee Borden, of Elgin, Illinois, and Gail Borden, formerly of Texas, now deceased, canned meats substantially by the same process, and produced the same product as is shown and described in the various letters patent, using substantially the same kind of cans as those therein shown, at Borden Station, Colorado Co., Texas, at Bestrop, in Bestrop Co., Texas, and at Galveston, Texas, and at other places, to wit, at Elgin, in the State of Illinois, long prior to the date of the aforesaid letters patent, and sold said canned meats quite extensively throughout the country, all of which will be proven by the following named parties, to wit:

H. Lee Borden, now residing at Elgin, Kane Co., Illinois.

John P. Borden, now living at Borden, Colorado Co., Texas.

119 Frank Gibbie, now living at Lockport, N. Y.

J. E. Borden, who now reside at Galveston, Texas.

Furthermore, that the firm of Clapp & Bridgeman and others canned meat in the town of Fulton, in county of Aransas, and in the State of Texas, as early as A. D. 1869, using substantially the same processes and mechanisms, and producing the same product as shown and described in the complainants' letters patent above enumerated, and sold the same extensively at that time and various other times, to wit, more than two years prior to the date of the alleged inventions in above-specified letters patent, and the said products were sold by one Robert Hill, Faneuil Hall Market, in the city of Boston, Mass., long prior to the date of complainants' letters patent herein specified, and the same will be proved by—

James C. Bridgeman, who now resides at Kershena, Shawano Co., Wisconsin.

William T. Clapp, now residing at Los Angeles, California.

Col. G. W. Fulton and Charles W. Holden, now residing in Fulton, Aransas Co., Texas.

Robert Hill, who now resides at 68 Myrtle street, Boston, Massachusetts.

120 George H. Philbrook, now residing at 75 Montgomery street, Boston, Mass.

George D. Brown, now residing corner Spring Park, and River street, Jamaica Plains, Boston, Mass.

George O. Sanborn, at 195 Devonshire street, Boston, Mass.

These defendants will also prove, by each of the following witnesses, respectively, that he used, and knew of the public use, of the inventions described and claimed in each of the above-named complainants' patents long prior to their respective dates, to wit, for more than two years prior to the respective applications therefor, to wit:

Jacob Waltmeyer, who now resides at 182 Hamberg street, Baltimore, Maryland.

V. A. Waidner, No. 222 Sharp street, Baltimore, Md.

George W. Day, of Evans, Day & Co., on Charles street, near Biddle street, Baltimore, Md.

D. M. Turner, No. 1042 Indiana avenue, Chicago, Illinois.

George Burnham, now residing in Cumberland, Mo.

James McHowell, now residing in Hannibal, Missouri.

121 John Reckhow, at 134 N. Water street, in Rochester, N. Y.

Richard Bertram, now at 241 Front street, New York City, N. Y.

Ananias Edgett, with E. A. Edgett, Newark, Wayne Co., N. Y.

William H. Davis, now residing at Boston Highlands, Boston, Mass.

William J. Underwood, now at Belmont, Middlesex Co., Mass.

Charles Mitchell, now resides at 24 Sullivan street, in Charlestown district, Boston, Mass.

William A. Lewis, now residing at 228 Boston Highlands, Boston, Mass.

Elbridge C. Carney, residing in Somerville, Middlesex Co., Mass.

Horace H. Lewis, now residing in Boston, Suffolk Co., Mass.

Stephen H. Provost, in the city of New York, N. Y.

William H. Hudson, now residing at Wooside, Queens Co., New York.

Aaron K. Larabee, one of the firm of Kemp, Day & Co., in New York City.

B. R. Hawley, No. 1017 Brook street, Chicago, Illinois.

A. R. Robinson, now residing in Portland, Maine.

122 And these defendants say the information of the several facts hereinbefore stated was not known to them at the filing of their original answer herein, and defendants now avers the same to be taken in supplement and addition to the averments in original answer, and all of which these defendants are ready to maintain and prove as the court may direct, and pray as in said original answer.

NOBLE & ORRICK,
Def'ts Sol's.

JOHN W. NOBLE.
BLUFORD WILSON,
Counsel.

EASTERN DISTRICT OF MISSOURI:

John C. Orrick, being duly sworn, on his oath states that he is one of the solicitors for said defendant, and he has heard the foregoing answer read, and that the same is based upon facts learned by this affi-

ant in investigating the said action and in preparing the defence therein, and that the matters set forth in the said answer he believes to be true.

That said defendants are at this time absent from their homes, and
123 affiant makes this affidavit on account thereof.

JOHN C. ORRICK.

Subscribed & sworn to before me this 3d day of May, A. D. 1879.

I. H. CLARK,
U. S. Com. E. D. Mo.

(Endorsed:) Filed May 5th, A. D. 1879. J. A. Jones, clerk.

124 *Supplemental answer of St. Louis Beef Canning Co.*

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:
In the United States circuit court in and for said southern district.
In chancery.

THE WILSON PACKING COMPANY ET AL., COMplainants,
vs.
ROBERT D. HUNTER ET AL., DEFENDANTS.

The supplemental answer of the St. Louis Beef Canning Company, one of said defendants, to complainants' amended bill.

This defendant, yet reserving to itself all right of exception to said amended bill of complaint by leave of court first duly had, for further answer thereto saith, on information and belief, that the things patented in the several letters patent, and each of them in the said
125 bill of complaint alleged and set forth, or some substantial and material part or parts thereof, claimed as new, were anterior to the alleged or any discovery or invention thereof, or any substantial or material part thereof, by the patentees, or either of them, were patented or described and published in the following letters patent, viz:

English patent No. 8874 issued to John Wertheimer, March 8th, 1841.

English letters patent No. 231, issued to A. M. Fatio and F. Verdiel, January 31st, 1854.

English letters patent No. 2422, issued to J. J. B. S. M. Lignoe, October 30th, 1855.

English letters patent No. 9312, issued to John Bevan, April 6th, 1842.

Letters patent of the United States No. 138502, issued to W. C. King, May 6th, 1873.

Letters patent of the United States No. 138735, issued to D. Challioner, May 13th, 1873.

Letters patent of the United States No. , issued to Ezra Daggett and Thomas Kensett, January 19th, 1825.

126 And this defendant, further answering upon information and belief, saith that the things patented in the said several letters patent, or some substantial or material parts thereof claimed as new, were anterior to the alleged invention thereof by the said several patentees, or any of them, shown and described in the following printed publications, viz:

Scientific American, a journal published in New York City, vol. 5, page 81, A. D. 1849, and vol. 7, page 325, A. D. 1851.

Tomlinson's Cyclopedia, published by George Virtue & Co., London and New York, 1852, vol. 1, pp. 703–708.

The London Herald, a journal published in London, England, the Nos. for June 10th & June 19th, A. D. 1865; title of article "The Preservation of Food, especially fresh meat & fish."

Le Liver de tous les Minages on l'art de conserver pendant pensieurs années toutes les substance animals et vegetables, published in Paris, France, fourth edition, 1831.

127 Description des Brevits d' invention, Paris, France, vol. 70, page 491, 1839 (1st series).

French patent 9881, July 25th, 1839, to Bertram & Feydeau, the same, vol. 44, page 289, 1855 (2nd series).

French patent 12667, April 7th, 1855, to Martin de Lignoe, the same, vol. 84, page 235, 1839 (1st series).

French patent 11613, July 17th, 1839, to Louis Amedee Fastier.

Le Consexvateur, Le livre de tous les Minages par Appert 5th edition, 1858; Paris, France, Depot de Libraire, pages III, X, XIII, introduction, pages 47, 50, 59, 60, livre de tous les Minages.

And in the following publications, viz:

Repertory of Arts, vol. 32, 2nd series, page 196; London; printed for J. Wyett, Repertory office, Hatton Garden, 1818.

Reis Cyclopedia, vol. 28, Provisions, preservations of.

The Cyclopedia or Universal Dictionary of Arts, Science, & Literature, vol. 28; published London 1819. Printed for Longman, Hurst, Reis, Orme, and Brown; Paternoster Row.

And this defendant further answering, states on information and
128 belief that the said alleged inventions and things patented and claimed in and by the said several letters patent were in public use or on sale in this country for more than two years anterior to any application for the said several original patents, or either of them, by the said respective patentees, with their consent and allowance, and that they were known to and used by prior to the date of the respective patents.

William Archdeacon, who now resides at Transit House, Union Stock Yards, in Cook County, Illinois, New York and Texas Beef Preserving Co., and Allan, Poole & Co., in Galveston, Texas, which will be proved by Munroe, whose residence is now unknown.

V. B. Poole, who now resides in Galveston, Texas.

Gray, who now resides in Chicago, Illinois.

J. D. Grinnell, who now resides in Deerfield, Massachusetts.

Edward Connoity, who now resides in Pooleville, Galveston, Texas.

Mrs. Edward Connoity, who now resides at Pooleville, Galveston, Texas.

N. B. Robinson, now residing at Galveston, Texas.

Colonel E. McLain, Charles Stroden, Sam Frazier, George
129 Depmore, Frank Miller, all now residing in Galveston, Texas.

That Dr. M. Pearl canned meat, using substantially the same process, and making substantially the same product as that described and claimed in the above patents enumerated, and was succeeded by Hutchinson and Clapp, at Houston, in the State of Texas, long prior to the alleged invention above specified, and the same will be proved by Dr. M. Pearl, Albert Flengal, Charles Sherman, and John Shubut, all now residing at Houston, in the State of Texas, aforesaid, and Andrew McE. Demcan, of Chicago, now temporarily at Hannibal, Missouri.

H. Lee Borden, of Elgin, Illinois, and Gail Borden, formerly of Texas, now deceased, canned meats substantially by the same process and produced the same product as is shown and described in the various letters patent, using substantially the same kind of cans as those therein shown at Borden Station, Colorado Co., Texas; at Bestrop, in Bestrop County, Texas; and at Galveston, Texas, and at other places, to wit, at
130 Elgin, in the State of Illinois, long prior to the date of the aforesaid letters patent, and sold said canned meats quite extensively throughout the country, all of which will be proven by the following named parties, to wit:

H. Lee Borden, now residing at Elgin, Kane Co., Illinois.

John P. Borden, now living at Borden, Colorado Co., Texas.

Frank Gibbu, now living at Lockport, N. Y.

J. E. Borden, who now resides at Galveston, Texas.

Furthermore, that the firm of Clapp and Bridgeman and others canned meat in the town of Fulton, in the county of Aranses, and in the State of Texas, as early as A. D. 1869, using substantially the same processes and mechanisms, and producing the same product as shown and described in the complainants' letters patent above enumerated, and sold the same extensively at that time, and various other times, to wit, more than two years prior to the date of the alleged inventions in above specified letters patent, and the said products were sold by one Robert Hill, in Faneuil Hall market, in the city of Boston, Mass., long prior to the date of complainants' letters patent herein
131 specified, and the same will be proved by—

James C. Bridgeman, who now resides at Kershina, Shawano County, Wisconsin.

William J. Clapp, now residing at Los Angelos, California.

Col. G. W. Fulton, and Charles W. Holden, now residing in Fulton, Aransas County, Texas.

Robert Hill, who now resides at 68 Myrtle street, Boston, Massachusetts.

George W. Philbrook, now residing at 75 Montgomery street, Boston, Massachusetts.

George D. Brown, now residing Coma Spring Park, and River street, Jamaica Plains, Boston, Mass.

George O. Sanborn, at 195 Devonshire street, Boston, Massachusetts.

This defendant will also prove, by each of the following witnesses respectively, that he used and knew of the public use of the inventions described and claimed in each of the above named complainants' patents long prior to their respective dates, to wit, for more than two years prior to the respective applications therefor, to wit:

Jacob Waltmeyer, who now resides at 182 Hamberg street, Baltimore, Maryland.

V. A. Waidner, No. 222 Sharp street, Baltimore, Maryland.
132 George W. Day, of Evans, Day & Co., on Charles street, near Biddle Street, Baltimore, Maryland.

D. M. Turner, No. 1042 Indiana avenue, Chicago, Illinois.

George Burnham, now residing in Cumberland, Mo.

James McHowell, now residing in Hannibal, Missouri.

John Rickhow, at 134 N. Water street, in Rochester, N. Y.

Richard Bertram, now at 241 Front street, New York City, N. Y.

Ananias Edgett, with E. A. Edgett, Newark, Wayne Co., N. Y.

William H. Davis, now residing at Boston Highlands, Boston, Mass.

William J. Underwood, now at Beimont, Middlesex Co., Mass.

Charles Mitchell, now resides at 24 Sullivan street, in Charlestown district, Boston, Mass.

William R. Lewis, now residing at 228 Boston Highlands, Boston, Mass.

Elbridge C. Carney, residing in Somerville, Middlesex, Co., Mass.

Horace H. Lewis, now residing in Boston, Suffolk Co., Mass.

Stephen H. Provost, in the city of New York, N. Y.

William H. Hudson, now residing at Woodside, Queens Co., New York.

Aaron K. Larabee, one of the firm of Kemp, Day & Co., in New York City.

133 B. R. Hawley, No. 1017 Brook street, Chicago, Illinois.

A. R. Robinson, now residing in Portland, Maine.

And this defendant says the information of the several facts hereinbefore stated, was not had by it at the filing of the original answer herein, and defendant now avers the same to be taken in supplement and addition to the averments in original answer; and all of which this defendant is ready to maintain and prove as the court may direct, and prays as in said original answer.

THE ST. LOUIS BEEF CANNING CO.,
By H. L. NEWMAN, *Pres.*

NOBLE & ORRICK,
Def't's Sol's.

134 EASTERN DISTRICT OF MISSOURI:

Henry L. Newman, being duly sworn, on his oath says he is president of said defendant, the St. Louis Beef Canning Company, and that affiant has heard read the foregoing supplemental answer and that the matters therein as stated are true save when stated on information and belief, and as to those matters affiant believes the said matters to be true, and affiant says, said seal annexed is the seal of said corporation and is annexed hereto by authority of said corporation.

HENRY L. NEWMAN.

Subscribed and sworn to before me this 3rd day of May, A. D. 1879.

J. H. CLARK,
U. S. Com., E. D. Mo.

(Endorsed:) Filed May 5th, A. D. 1879. J. A. Jones, clerk.

And afterwards, to wit, on the 8th day of May, in the year last aforesaid, came the complainants by their solicitors, and filed in said clerk's office their replication in said cause, which is in the words and figures following, to wit:

135 *Replication to answer of St. Louis Beef Canning Co.*

United States circuit court, southern district of Illinois.

WILSON PACKING COMPANY, ARTHUR A. LIBBY, ARCHIBALD MCNIEL, and CHARLES P. LIBBY
vs.
THE ST. LOUIS BEEF CANNING CO. ET AL.

The replication of Wilson Packing Company, Arthur A. Libby, Archibald McNiel, and Charles P. Libby, complainants, to the answer of St. Louis Beef Canning Company, one of said defendants.

These repliants, saving and reserving unto themselves now and at

all times hereafter, all and all manner of benefits and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says, that they will aver, maintain and prove their said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendants, is uncertain, untrue, and insufficient to be replied unto by these repliants. Without this, that any other matter or thing
136 whatsoever in said answer contained, material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true, all which matters and things, these repliants are and will be ready to aver, maintain and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

GOODWIN, OFFIELD & TOWLE,
Complainants' Solicitors.

(Endorsed:) Filed May 8, 1879. J. A. Jones, cl'k.

And afterwards, to wit, on the 2d day of June, in the year last aforesaid, came the parties by their solicitors, and filed in said clerk's office, their stipulation in said cause; which said stipulation is in the words and figures following, to wit:

Stipulation as to evidence, &c.

United States circuit court.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

137 THE WILSON PACKING COMPANY ET al., complainants, *vs.* ROBERT D. HUNTER, ET AL., DEFENDANTS. } Nos. 5102 and 5301.

In chancery.

It is hereby stipulated and agreed in the above-styled suits that in suit No. 5301 last brought the defendants shall appear without further process and answer on or before the first Monday of July next, and replication shall be filed on or before the Monday of August following;

That upon the issue being made in said suit No. 5301 last brought, the two suits (Nos. 5102 & 5301) shall be consolidated for hearing, and all testimony or evidence in either suit taken or agreed to be introduced may with like effect be introduced and used in the other, subject always to objections for competency or relevancy, and the stipulation shall apply to all testimony taken in evidence adduced as well that before issue joined in suit No. 5301 (last brought) as that after such issue.

It is also and further stipulated that the suit No. 5102 (now at
138 issue) shall be continued at the approaching June term of said court without further proceedings, and that the time for taking depositions and adducing evidence in either suit is to be extended to first Monday of December next (1879.)

It is expressed to be the purpose of the parties to have both said causes above mentioned heard on their respective issues at the same

time, and so far as applicable on the same testimony with view to advoiding unnecessary labor or expense.

May 26th, 1879.

NOBLE & ORRICK,
Def'ts' Sol's.
OFFIELD & TOWLE,
Comp'ts' Sol's.

(Endorsed:) Filed June 2d, 1879. J. A. Jones, clerk.

And afterwards, to wit, on the 15th day of July, in the year last aforesaid (1879), came the parties, by their solicitors, and filed in said clerk's office their stipulation, together with the defendants' amendment
139 to amended and supplemental answer, which are in the words and figures following, to wit:

Stipulation & amendment to supplemental answer.

United States circuit court.

SOUTHERN DISTRICT OF ILLINOIS:

THE WILSON PACKING COMPANY ET AL., COMplainants,
vs.
ROBERT D. HUNTER ET AL., DEFENDANTS. } In chancery.

It is hereby stipulated in the above-styled cause that the words expressed within may be added and interlined, if necessary, as an amendment to the answer or supplemental answer of the defendants, and shall be taken, when filed with this stipulation, as a part of defendants' pleading for all intents and purposes, and the same shall be also taken to be denied by the general replication of complainant not already filed.

OFFIELD & TOWLE,
Comp'ts' Sol'rs.
NOBLE & ORRICK,
Def'ts' Sol's.

140 *Amendment to answer.*

And these defendants, in further answering, say that in so far as the process specified in said reissed letters patent No. 6370, granted to William J. Wilson, as aforesaid, described any process for the preservation of meat to be made available at all times for food, such process is entirely useless and inoperative, and if practiced would result in the rapid putrefaction of the meats, which would be in a short time unfit for food; and they therefore say that the said patent is void.

And these defendants' in further answering, say that the description of the process in reissued letters patent No. 6451, division A, as aforesaid, is unintelligible and does not set forth enough to enable any person skilled in the art to understand the invention proposed to be described or to know how to practice the same.

They therefore say that the said reissued letters patent are void.

NOBLE & ORRICK,
Def'ts' Sol's.

(Endorsed:) Filed July 15, A. D. 1879. J. A. Jones, clerk.

141 And afterwards, to wit, on the 9th day of December, in the year last aforesaid, (1879) came the parties, by their solicitors, and filed in said clerk's office their two stipulations in said cause, which said two stipulations are in the words and figures following, to wit:

Stipulation as to time to take evidence.

THE WILSON PACKING CO. ET AL.
vs.
ROBERT HUNTER ET AL.

WILSON PACKING CO. ET AL.
vs.
ST. LOUIS BEEF CANNING CO.

It is hereby agreed that respondents may have to March 1st, 1880, in which to complete their evidence.

WM. HENRY CLIFFORD,
Of Counsel of Complainant.
COBURN & THACHER,
Of Counsel for Def'ts.

OFFIELD & TOWLE,
Compl'ts Sol'rs.

(Endorsed:) Filed Dec. 9, 1879. J. A. Jones, clerk.

142 *Stipulation as to evidence in other causes.*

THE WILSON PACKING COMPANY ET AL., COMPL'TS,
vs.
ROBERT D. HUNTER ET AL., DEFTS.

THE WILSON PACKING CO. ET AL.
vs.
THE ST. LOUIS BEEF CANNING CO.

In the United States circuit court, southern dist. of Illinois.

It is hereby stipulated that printed copies of the testimony heretofore taken in the cases of The Wilson Packing Co. et al. vs. The St. Louis Beef Canning Co. et al.; Same vs. The Chicago Packing & Provision Co., and Same vs. Thos. Ashwell, on the part of the defendants, before Chas. E. Clifford, U. S. commissioner, Mo. dist., W. P. Preble, jr., stated examiner, and Thos. H. Murdock, notary public, may be filed in the above cause, as and for the original; said printed copies may be read in evidence on the hearing of said causes, subject, however, to all objections for irrelevancy, incompetency, or failure to give statutory notice as to names, &c., of witnesses, &c., &c.

143 WILLIAM HENRY CLIFFORD,
Of Counsel of Complainants.
NOBLE & ORRICK,
For Def'ts.

OFFIELD & TOWLE,
Solicitors for Comp'ts.

COBURN & THACHER,
Of Counsel for Def'ts

(Endorsed:) Filed Dec. 9, 1879. J. A. Jones, clerk.

And afterwards, to wit, on Tuesday, the 6th day of December, at the June term of said court, in the year of our Lord one thousand eight hundred and eighty-one, the following proceedings were had in said court in said cause, and entered of record, to wit:

Decree.

THE WILSON PACKING COMPANY, ARTHUR A. Libby, Archibald McNiel, & Charles P. Libby, *vs.* ROBERT D. HUNTER, H. B. MERRELL, HENRY L. Newman, and The St. Louis Beef Canning Company.	5102.	In chancery.

This cause having been heretofore argued by the counsel for
144 the respective parties, and considered by the court, it is ordered that the bill herein be dismissed for want of equity, at the costs of the complainants, and that defendants have and recover of complainants their costs and charges in this behalf expended, to be taxed, amounting to the sum of forty-seven dollars and thirty-five cents, and that execution issue therefor.

And thereupon the complainants, by their solicitors, pray an appeal to the Supreme Court of the United States, which is allowed, upon giving bond, in conformity with law, with security approved by the court.

And afterwards, to wit, on the 7th day of December, in the year last aforesaid (1881), came the parties, by their solicitors, and filed in said clerk's office a stipulation in said cause, which said stipulation is in the words and figures following, to wit:

Stipulation as to record for Supreme Court.

In the circuit court of the United States for the southern dis-
145 trict of Illinois. In chancery.

THE WILSON PACKING COMPANY, ARTHUR A. Libby, Archibald McNiel, and Charles P. Libby, *vs.* ROBERT D. HUNTER, H. B. MERRILL, HENRY L. Newman, and The St. Louis Beef Canning Company.

Bill for infringement of patent.

It is hereby stipulated and agreed that the above-entitled cause and the other cause pending in the same court between the same parties, and also the cause in the United States circuit court for the northern district of Illinois, with the same complainants, against the Chicago Packing and Provision Company and others, were all tried together, by stipulation, upon the same testimony, it having been stipulated that

testimony taken in either cause might be used in either of the other causes with the same force and effect as if specially taken in that cause.

It is further stipulated and agreed that the record of all testimony and stipulations that may be certified up to the Supreme Court of the United States on appeal of either of the said three causes, may
146 be used as a part of the record in this cause, the same as if had been specially certified up as a part of the record of this cause.

It is further stipulated and agreed that the record to be taken to the said Supreme Court in this cause, as belonging exclusively in this cause, shall consist only of the pleadings therein, the final decree, and this stipulation, but that all of the testimony and stipulations that are certified up in the records of either of the other causes above named shall be considered a part of the record in this cause, and be used in the Supreme Court, the same as if again specially certified up as a part of the record in this cause.

Dated and signed this fifth day of December, A. D. 1881.

JNO. N. JEWETT,
Sol'c't'r & of Counsel for Compl't.
COBURN & THACHER,
Solic't's & of Counsel for Def'ts.

(Endorsed:) Filed Dec. 7, A. D. 1881. J. A. Jones, cl'k.

147 And afterwards, to wit, on the 12th day of December, in the year last aforesaid, came the said complainants, by their solicitors, and filed in said clerk's office their appeal bond in said cause, which said appeal bond is in the words and figures following, to wit:

Appeal bond.

In the circuit court of the United States for the southern district of Illinois.

THE WILSON PACKING COMPANY, ARTHUR A. Libby, Archibald McNeill, and Charles P. Libby,
vs.
ROBERT D. HUNTER, H. B. MERRILL, HENRY L. Newman, and The St. Louis Beef Canning Company.

Know all men by these presents that we, The Wilson Packing Company, a corporation of the State of Illinois, Arthur A. Libby, Archibald McNeill, and Charles P. Libby, as principals, and William J. Wilson and William T. Palmer, of the city of Chicago, in the county of
148 Cook and State of Illinois, as sureties, are held and firmly bound unto Robert D. Hunter, H. B. Merrill, Henry L. Newman, and The St. Louis Beef Canning Company, in the sum of one thousand dollars; to the payment of which, well and truly to be made, we bind ourselves, and each of us, our successors, heirs, executors, and administrators, jointly and severally, firmly by these presents.

In witness whereof the said Wilson Packing Company has caused these presents to be signed by its president in its corporate name, and its corporate seal to be hereto attached, and the said Arthur A. Libby, Archibald McNeill, Charles P. Libby, William J. Wilson, and William

T. Palmer, have hereunto set their hands and seals this eighth (8th) day of December, A. D. 1881.

Whereas the above named, The Wilson Packing Company, Arthur A. Libby, Archibald McNeill, and Charles P. Libby have been allowed an appeal to the Supreme Court of the United States from the decree of the circuit court of the United States for the southern district of Illinois, rendered by the said circuit court in the above entitled
149 cause, and entered of record therein on the sixth (6th) day of December, A. D. 1881.

Now, therefore, the condition of this obligation is such that if the above-named The Wilson Packing Company, Arthur A. Libby, Archibald McNeill, and Charles P. Libby shall prosecute their said appeal to effect, and answer all costs in case they shall fail to make good their plea, then this obligation shall be void; otherwise remain in full force and effect.

[L. S.] THE WILSON PACKING COMPANY,
By WILLIAM J. WILSON, *Pres't.*
WILLIAM J. WILSON, *Treas.*
ARTHUR A. LIBBY. [SEAL.]
ARCHIBALD McNEILL. [SEAL.]
CHAS. P. LIBBY. [SEAL.]
WILLIAM J. WILSON. [SEAL.]
WILLIAM T. PALMER. [SEAL.]

DEC'R 9TH, 1881.

Approved:

THOMAS DRUMMOND.

(Endorsed:) Filed Dec. 12th, A. D. 1881. J. A. Jones, clerk.

150 *Clerk's certificate.*

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

In the circuit court.

I, John A. Jones, clerk of the circuit court of the United States of America within and for said southern district of Illinois, do hereby certify that the foregoing is a true and correct copy of all the pleadings, the decree, stipulation, and appeal bond, in a certain cause lately pending in said court, wherein The Wilson Packing Company, Arthur A. Libby, Archibald McNeill, and Charles P. Libby were complainants, and Robert D. Hunter, H. B. Merrill, Henry L. Newman, and The St. Louis Beef Canning Company were defendants, as fully as the same now appear of record and on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office, in the city of Springfield, in said district, this second day of January, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the said United States the one hundred and sixth year.

[SEAL.] J. A. JONES, *Clerk.*

(Indorsement on cover:) No. 1191. The Wilson Packing Company, Arthur A. Libby, Archibald McNeill, and Charles P. Libby, appellants, vs. Robert D. Hunter, H. B. Merrill, Henry L. Newman, and The St. Louis Beef Canning Company. S. Illinois C. C. U. S. Filed 11 January, 1882.

Supreme Court of the United States.

THE WILSON PACKING CO. AND LIBBY, McNEILL & LIBBY

Complainants and Appellants,

v.

ST. LOUIS BEEF CANNING CO.

SAME

v.

ROBERT D. HUNTER ET AL.

SAME

v.

THOMAS ASHWELL.

SAME

v.

THE CHICAGO PACKING & PROVISION COMPANY.

Discussion of the Evidence relative to the Defence that the Process described in the Wm. J. Wilson Patent had been practiced in this country more than two years prior to the application for a Patent thereon by the said Wilson.

This is numbered as the Sixth Defence in the classification adopted in my brief.

WILLIAM HENRY CLIFFORD,

of Counsel of Complainants.

B. Thurston & Co., Printers, 97½ Exchange St., Portland, Me.

SIXTH DEFENCE

TO THE

William J. Wilson Patent.

This is, that the same process as that set out in the specifications of that Patent were, long anterior to its date, practiced

By

GEO. F. LEWIS & Co., Portland, Me.
D. R. PROVOST, California.
J. WALTEMEYER, Baltimore, Md.
CLAPP & BRIDGMAN, Houston, Texas.
WELLS, MILLER & PROVOST, New York City.
RUMERY & BURNHAM, Portland, Me.
WM. UNDERWOOD, Boston, Mass.
M. PERL, Houston, Texas.

All of these alleged instances of anticipation, except two, are met with evidence of the clearest and most exact contradictory character, and the discussion of them involves only an examination and analysis of the evidence, and the ascertaining of with which side, under rules as law, the preponderance is.

The two instances against which no contradiction has been presented, are those of

M. PERL,
CLAPP & BRIDGMAN.

To the Clapp & Bridgman instance the reply is, that it was done under the Lyman Patent, and is even more remote from the Wilson Patent than the process set out in the Lyman Patent, departing, as it does, in some features, from the directions contained in the Lyman Patent.

To the instance of M. Perl, the reply is, that it was confessedly experimental, and consequently cannot anticipate anything, and also that it is on a wholly different principle from that of the Wilson Patent.

I will first take up those instances of alleged prior packing, to which we have presented contradictory evidence, and examine the evidence applicable to them in the order adopted above in naming them.

The Geo. F. Lewis & Company Packing.

This was alleged to have taken place in Portland, Maine.

Geo. F. Lewis one of the members of the firm thus testifies and lays the foundation for all that was introduced into the case afterward on this particular packing by either side:—

Quest. 6. State whether either of these firms at any time put up cooked boiled beef in tin cans, hermetically sealed?

Ans. 6. Yes, sir.

Defendants' Record, p. 228.

Ques. 7. Please state at what time this boiled beef was so put up by them, or either of them?

Ans. 7. Put it up all the time, from 1845 to the present time.

Ques. 8. Are you acquainted from actual experience, with the process by which this boiled beef was so put up?

Ans. 8. Yes.

Ques. 9. Please state in detail, the different steps that were taken with the meat from its raw state, until it was hermetically sealed in the can?

Ans. 9. Sometimes we used to roast the beef. Sometimes we used to put it into the cans raw, sometimes steamed. We used to steam it because it was easier to do so than to boil it, we could do it quicker.

Ques. 10. Before boiling or steaming, state whether you applied any salt or salt-petre to the meat?

Ans. 10. We always used salt, both for roast and boiled.

Ques. 12. In what sized pieces was the meat, after having been thus partially cooked, placed in the can?

Ans. 12. We used to try to keep as large pieces as we could, so that it would not look as if it was hashed.

Ques. 13. State whether any pressure was used in putting this meat into the can, if so state what the pressure was. This cooked meat I mean?

Ans. 13. We used to use a small screw press, similar to that used for a letter press. Sometimes used to put it in with our hands, sometimes with a lever, sometimes without any.

Ques. 14. After the meat was thus pressed into the cans what was the next step?

Ans. 14. To put the covers on and seal it up air.tight.

Ques. 15. What next?

Ans. 15. We used to put it into a bath of hot water and give it a bath of about two and a half hours; then it was punctured or probed and the vent closed up and bathed again.

Ques. 16. After the meat had been thus processed, state whether it was ready for eating?

Ans. 16. It was all ready.

Respondents' Record, p. 230.

Cross-Ques. 32. Was your boiled beef what you sometimes called "a la mode" beef?

Ans. 32. Yes, we did by spicing it making a la mode of it.

Cross-Ques. 33. How much gravy did you put into a two pound can?

Ans 33. We used to put in gelatine or stock, about two ounces to a two pound can, one ounce to a one pound can, in that proportion, four ounces to a four pound can.

Cross-Ques. 34. Did you not make your gelatine, by extracting it from the bone, by steaming or boiling?

Ans. 34. I did.

Cross-Ques. 35. This gelatine was poured or placed in the can, after the meat was put into the can, was it not?

Ans. 35. No, sir. We used to put it in first, in the bottom of the can, we could only put it in, in a liquid state.

Cross-Ques. 36. Then when you made a la mode beef, you added to this, pepper and other spices, did you not?

Ans. 36. Yes.

Cross-Ques. 38. Did you in the packing which you have described, have any purpose of design to compress the meat in the cans, so as to form out of various pieces a solid coherent cake molded by the can, like the meat of Libby, McNeill & Libby?

Ans. 39. I don't know that I had any particular design in so putting it into the can. I think that Mr. Libby must have copied that idea from me. It was difficult to get it into the can after it had been cooked without being pressed to give the weight. You have to give them the required weight, or they will float all round in the bath.

Cross-Ques. 40. I desire to know if you now testify if you had any purpose with the meat of which you have spoken of making it an article of compressed meat, filling and shaped by the interior of a can so that it would issue from the can in such form?

Ans. 40. I had no particular object in so doing, but I knew what the result would be, that it would come out of the can solid, would come out the same shape as the can. If warm it would not hold the same shape. If cold it would.

Cross-Ques. 41. Did you have any design or purpose of producing an article of compressed meat, forming a solid cake, of the size and form of the interior of the can?

Ans. 41. I never gave that thing a thought, I knew what the consequences would be.

Complainants' Record, p. 234.

Cross-Ques. 51. Was this the only reason why you added the gelatine?

Ans. 51. It saved so much good material and made extra weight in the cans. Thus gave our customers a good trade.

Cross-Ques. 52. Did it not also fill places or *interstices* in the cans?

Ans. 52. It did.

Defendants' Record, p. 236.

Cross-Ques. 53. Do you now testify that the only substantial difference between this article that you put up and the Libby compressed meat, is that theirs is corned?

Ans. 53. I do.

Cross-Ques. 54. Do you consider that putting into the can an article so well known as corned beef, would make the article a new one, to a packer of your experience and others?

Ans. 54. Well, it was a novelty to me, when I heard of putting corned beef in cans. It had been put up in barrels, it was new to me, I never heard of it till I saw Mr. Libby's.

Cross-Ques. 55. Then you now testify do you, that in your view the novelty consists in the corned state?

Ans. 55. In the salted or corned state, yes, sir.

Cross-Ques. 56. You gave a deposition before this time, concerning the compressed meat, did you not?

Ans. 56. I did.

Cross-Ques. 57. And when you testified in that deposition as follows: "Are you familiar with the article of compressed cooked meat, in solid form, in its natural state, that you had never seen any before," you referred to its being corned, I suppose, although you were unfortunate enough not to mention it?

Ans. 57. I was aware when I gave my deposition at that time, that it was corned beef. I don't know whether I mentioned it in my deposition that I gave to Mr. Libby. I knew that it was corned beef.

Cross-Ques. 58. And I suppose you put the novelty of it as you do now entirely on the ground of its being corned when you answered as follows, in that deposition. "How did the complainants' article strike the trade, when

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Cross-Ques. 58. And I suppose you put the novelty of it as you do now entirely on the ground of its being corned when you answered as follows, in that deposition. "How did the complainants' article strike the trade, when

it was first introduced, as regards it novelty." Ans. "Favorably I should say, it was considered an entirely new thing."

Ans. 58. As near as I can recollect, that is what I testified to before.

Cross-Ques. 59. And I presume you recollected what your firm had done, when you testified as follows in that deposition, "In the processes practiced by your firm, did you ever compress meat into the can, with a view to the production of an article of compressed meat like the complainants?" Ans. "We never did."

Ans. 59. Mr. Clifford answered that question, I presume, as I have already answered, why I pressed my meat in.

Cross-Ques. 60. Do you now testify, that when you gave that deposition, you then intended as the only difference between your article and that of the complainants', only that theirs is corned?

Ans. 60. That is all the difference.

Respondents' Record, p. 237.

This deposition was given in the present cases in Nov., 1879.

In the suit Wilson Packing Co., and Libby, McNeill & Libby v. Wm. B. Clapp, which was heard before this court in 1878, this same Geo. F. Lewis testified as follows:

Ques. 5. During what time was the firm of W. K. Lewis & Bros. engaged in canning meats in the city of Portland?

Ans. We commenced in 1845, and packed until about three years ago, when we removed our works up to Boston.

Ques. 6. Are you familiar with the processes practiced by said firm with which you have been connected in canning meats?

Ans. I am.

Ques. 7. Are you familiar with the various kinds of canned meats which have been put up in Portland during the time you have been in the business?

Ans. I am.

Ques. 8. Are you familiar with the article of compressed cooked meat, in solid form, in its natural state, put up by the complainants in this case?

Ans. I think I am.

Ques. 9. Did you ever see any such article prior to the time the complainants' meat was first brought to your notice?

Ans. Never.

Ques. 10. How did the complainants' article strike the trade, when it was first introduced, as regards its novelty?

Ans. Favorably, I should say. It was considered an entirely new thing.

Ques. 11. In the processes practiced by your firm, did you ever compress meat into the cans with a view to the production of an article of compressed meat like the complainants'?

Ans. We never did.

Complainants' Record, pp. 840, 841. Ints. 5-11.

In his present deposition he says he *meant* by this last quoted evidence, that the only difference was that the Complainants' *meat is salted.*

Respondents' Record, pp. 236, 237. Ints. 56 to 60.

And yet that which he said he put up from 1845 till the date of his deposition, *was also salted.*

Respondents' Record, p. 229. Int. 10.

He does not therefore *start out* nicely, it must be confessed, handicapped as he is with his former deposition.

But he is attempted to be supported by his brother, who lived in Boston, and was but seldom down to the factory, and whose appearance on the stand was anything but creditable.

Wm. K. Lewis, *Respondents' Record, p.*
Direct-Ques. 13-20, 22-25, 28-30.
Cross-Ques. 90, 91, 139-144, 147, 148.

These two brothers, beside being self-contradicted, are completely refuted by the depositions of

Jeremiah Ford, Comp. Rec. 183
A. H. Davis, " " 225-6
John Chadwick, Comp. Rec. 513
W. H. Davis, " " 521

A. G. Smith, Comp. Rec. 301-3
S. B. Wiggin, " " 373-4, 376
W. S. Jordan, " " 443-4
J. H. Trowbridge, Comp. Rec. 758-9

A brief quotation from each of Complainants' witnesses to show that the destruction of this alleged Lewis packing is complete.

Jeremiah Ford, Ints. 37-44, 57-9

Int. 37. What kind of beef did they pack? I mean how was it prepared?
Ans. 37. Well, we took the beef in when we boiled it, and boned it and cut it up into suitable pieces and put them into the can, having a mixture of the different kinds that were in the beef put in together with what we called stock, made from the bone, so many ounces, and roast, and we put it up in the shape of soup—vegetables cut up in small pieces. That is about the way we used to put it up—boiled and roast and soups.

Int. 38. When you put up what you called the boiled beef, in what condition were the pieces when they went into the cans—were they raw or cooked?
Ans. 38. They were raw. Our roast beef we merely browned it on the outside, but still it was in a raw state on the inside.

Int. 39. Then what you call the boiled beef was cooked in the sealed-up can during the bathing, was it not?
Ans. 39. It was.

Int. 40. Did you or not, when packing what you call the boiled beef, weigh out a certain quantity for a given size of can?
Ans. 40. We did.

Int. 41. Now, suppose you had a two pound can, how much was it the rule to weigh out of meat for that can?
Ans. 41. About fourteen ounces.

Int. 42. With what did you then fill, if anything, the rest of the can?
Ans. 42. The stock made from the bone.

Int. 43. What was this stock, a sort of gravy or soup?
Ans. 43. It was soup in the first place. Bones boiled and the fat scum off, and that boiled down in a gelatine.

Int. 44. And with this and with the raw meat, the pieces of meat being put in first, you filled the cans did you not?

Ans. 44. Yes, sir; it made the weight.

Int. 57. Was there, in the Lewis factory in Portland, any lever or plunger used to force or compress the meat into the cans?

Ans. 57. There was not.

Int. 58. Was there anything done to the meat while it was being placed in the cans, to get the meat into the cans, except merely laying or placing it in them?

Ans. 58. There was not.

Int. 59. What was this meat called by the Lewises and in the factory? I mean the meat which was put into the cans raw with the stock and cooked during the bathing. What name was given to it?

Ans. 59. The label called it boiled beef.

This covers a period of four or five years of the time from 1845 to the time of taking the deposition, which is the time named by Lewis during which he says he packed boiled beef.

A. H. Davis, *Int. 14.*

John Chadwick, *Int. 4.*

This witness was a sea-captain, was a purchaser of Lewis' meat from 1849 to 1870 and describes the meat as uniformly loose in the can, in its own gravy and not at all compressed, in the form of a stew.

A. G. Smith, *Ints. 2–13.*

Int. 2. How many years have you been engaged in packing hermetically sealed goods, with whom and when did you begin?

Ans. About thirty-one years: first worked for Geo. F. Lewis in September, A.D. 1846. I staid in his employ and the firm in Boston of Wm. K. Lewis & Bro.—it was all the same thing—until April, A.D. 1861, and then I enlisted in the army and staid there three years. I returned May, A.D. 1864, was mustered out of the service in Boston and came to Portland. Early

in June I commenced work for George F. Lewis, I worked for him and the firm in Boston until Feb., A.D. 1860, then I left their employ and went to work for Burnham & Morrill and have been with them ever since.

Int. 3. Were you acquainted with the way in which the beef in the Lewis factory was prepared before it was put into the can, and with the manner in which the cans were filled?

Ans. I was, sir, well.

Int. 4. Did you know this from the time you went there in 1846 up to the time you enlisted in the army?

Ans. I did, sir.

Int. 5. Were you ever employed in filling the beef into the cans from time to time; and if so, how often or how much, and did you or not see it done by others; and if so, how often?

Ans. Yes, sir, I was so employed; frequently for four years; worked on general work for four years, or until I was seventeen years old, then I went to making cans and sealing up. I continued in that branch of the business until I enlisted. Frequently I would go into the room where the others were. I saw it from time to time, frequently.

Int. 6. In what condition was the beef, which was called boiled beef, put into the cans during the fourteen years you first worked at the Lewises, cooked or raw?

Ans. Raw.

Int. 7. Please describe how the raw meat was cut up before putting into the cans; what the sizes of the pieces were relatively to the sizes of the cans as nearly as they could cut them?

Ans. For the first six years that I worked for Mr. Lewis, each quarter of beef was cut in two pieces; the round of the hind-quarter and the shoulder and neck-piece of the fore-quarter were packed for boiled beef, packed raw; the other portions of the beef were roasted. As near as I can describe that, they were four or five pieces mixing in the round and fore-quarter, part of each.

Int. 8. Was there any stock or gravy put into the cans with this raw meat, during the fourteen years referred to?

Ans. Very seldom; but I have seen it used.

Int. 9. From 1846 to 1860, was there any pressure, by levers or sticks, used on the raw meat in the cans, in the packing of it into them?

Ans. There was not

Int. 10. From 1846 to 1860, what was the condition of this beef thus packed raw, after the cans were ready for sale, as to juice or gravy in the cans?

Ans. There would be on top of the can a small portion of fat; underneath that, around the edges of the can, would be a light beef stock or jelly.

Int. 11. Have you ever opened any of those cans of meat packed raw, put up before 1860, to see whether the pieces would fall apart, when poured into a dish out of the can?

Ans. When a can is heated you can pour the gravy off and the meat will come out in pieces. When a can is cold the can can be opened so that the meat will come out in a solid mass. What I mean by that is, the fat and gravy will hold the meat together if the can is opened on the side and not on the top. The top of the can is cut off round the side.

Int. 12. You mean, do you not, that the fat and gravy held the pieces together when cold?

Ans. Yes sir.

This evidence covers a period of fifteen years of the time referred to in Geo. Lewis' testimony.

S. B. Wiggin, *Ints. 9-19. Comp. Rec. 373-376.*

Mr. Wiggin worked for the Lewises between six and seven years. He was a can maker—was familiar with the process pursued in preparing and putting beef into their cans. Was in the canning room every day. He says the meat was boned in the raw state, put into the cans raw, no pressure was used, and after the process of hermetically sealing, the meat was loose in the cans. What was labelled boiled beef was cooked during the process of hermetically sealing, and of course in that process shrunk. There was no meat previously cooked by boiling put up there while he was there.

W. S. Jordan, *Comp. Rec., pp. 443, 444. Ints. 4-7.*

This witness is a shipping merchant in Portland and has been in the business since 1844. Has dealt in the Lewis canned

goods for twenty-five years. Is familiar with them, especially roast and boiled beef, so labelled. They all contained more or less liquid, were cooked mostly in the cans, not solid. This evidenced, according to the weight of the proofs in the case, that the meat was not cooked previously to canning.

Beside all of these contradictions, the two Lewis Bros. do not agree in their own stories.

Geo. F. Lewis says in his last deposition that he had packed boiled beef from 1845 down to the present time.

Question 7, Respondents' Record, p. 228.

His brother says that they only put up a very little—

Int. 14. Could you state that you packed as many as a hundred cases?
Ans. I should think we did. A hundred cases would be twelve hundred cans. Yes, I should think we did.

J. H. Trowbridge, *Comp. Rec., pp. 758-9, Ints. 3-7, 14.*

Int. 3. Please state where you were in 1849 to 1852, and in what business then engaged.
Ans. In California; wholesale groceries.

Int. 4. During this time did you purchase or sell, or buy any canned goods of Wells, Miller & Provost and those of Wm. K. Lewis, of Boston, and to what extent?
Ans. Very largely, extensively, in large quantities.

Int. 5. Did you, in those years, frequently examine cans of beef and meats of Wells, Miller & Provost?
Ans. I did.

Int. 6. Please state what the condition of the canned meats was as to their being loose or solid in cans, and whether they contained gravy and moisture.
Ans. They always were loose, containing gravy and liquid matter—water.

Int. 7. Have you ever shaken the cans; and if so what was the effect?
Ans. They were always loose and would shake.

Thus with these Lewis brothers the account stands thus—

1 They do not agree as to the amount they packed—one runs it over a period of thirty-five years, and the other limits it to a few hundreds of cases.

2 One of them had, previously to testifying in this case, testified to precisely the reverse in a former case under the same Patents.

3 Even in this last deposition, Geo. F. Lewis does not pretend that the meat was cooked *fit to eat* by boiling.

Int. 11, Respondents' Record, p. 229.

4 Then they are contradicted by eight witnesses—four of whom worked for long periods of time in their factory, two of whom were old buyers of their goods, one of whom testifies to a record in an old patent case tried years ago, where Geo. F. Lewis testified exactly as he did in the Clapp case, i.e., the reverse of his deposition in this case, and one of whom is a very old retired packer, who states he knows they never made any compressed boiled beef.

I submit that the Lewises are disposed of.

The D. R. Provost Packing.

Concerning this packing there is no allegation in the answer.

It crept into the evidence in this way—

One S. J. Provost was alleged in the answer to have packed beef in New York city by a process which anticipated the Complainants' Wm. J. Wilson Patent.

To corroborate this S. J. Provost, a man by name of Joseph Farrell was introduced and sworn by the Respondents. During the course of his testimony, he swore that one D. R. Provost had put up beef in California, by first boiling it before canning, and had compressed the boiled beef into cylindrical cans.

No one else swore to this alleged instance, thus smuggled into the case.

We move to strike it out. It is not warranted by the pleadings.

Allegations are as necessary as proofs in Patent causes.

But we disproved the whole story utterly, by the evidence taken by Mr. Offield in California, to wit, by the depositions of—

E. B. Bech,	*Comp. Rec. p.*		*869.*
I. D. Huntoon,	"	"	" *874.*
W. W. Dodge,	"	"	" *877.*
J. S. Bacon,	"	"	" *881.*
F. Morton,	"	"	" *884.*
F. A. Manchester,	"	"	" *888.*
W. H. Stowell,	"	"	" *891.*
J. D. P. Seller,	"	"	" *894.*
J. E. Margary,	"	"	" *897.*
C. B. Jennings,	"	"	" *900.*

Although this evidence put in by the Respondents was wholly inadmissible, it has served one good purpose in calling out the reply of the Complainants, viz.: It has served to show that no confidence is to be put in the statements of Joseph Farrell, the principal witness of the Respondents to support the testimony of Stephen J. Provost. This will be again alluded to. If Farrell was not reliable as to D. R. Provost's alleged packing, he is open to suspicion as to S. J. Provost's packing.

This is all that it is deemed necessary to say concerning this instance in the evidence.

The Alleged Packing of J. Waltemeyer, Baltimore, Maryland.

This is as soon and easily disposed of as the one last taken up.

Waltemeyer does not himself describe a packing that would anticipate the Wm. J. Wilson Patent, and cannot with certainty testify as to the character of the product he made. Waltemeyer gives his date as of 1856.

4th. Ques. by same. Did you at any time pack any cooked boiled beef in hermetically sealed tin cans?
Ans. I did.

5th. Ques. by same. When and where?
Ans. I packed at No. 1 Calhoun Lane, Baltimore city, Maryland, I packed in 1867 and in 1868.

6th. Ques. by same. Do you remember the process adopted by you at that time in packing this boiled beef?
Ans. I do.

7th Ques. by same. Will you please state what that process was, step by step, commencing with the raw meat?

Ans. We would take the largest bones out before we cooked it, then we would take all the small bones out, cut the beef very small, then we would pack it in cans. We would cap the cans up and hermetically seal them.

8th Ques. by same. To what extent did you boil the meat before canning it?

Ans. We boiled it enough so as to cook it enough to be eaten before it went into the cans.

9th Ques. by same. How do you know that?

Ans. My women used to eat a good deal of it up, and I would try and stop them; I have eaten some of it myself.

19th Ques. by same. Under the process as practiced by you with this meat, about what was its temperature when placed in the can?

Ans. Well, I could not tell you exactly; we put it in as hot as we could get it in there—so hot that sometimes the women burnt their fingers pressing it in the can.

20th Ques. by same. How did you press it in the can? Please describe just what you did?

Ans. We would weigh off a pound and a half of beef in a scale, and they would pack that in the can.

21st Ques. by same. How would they pack it in the can?

Ans. They would pick it up in their fingers. They may have packed it up with sticks; I will not say positively whether they did or not.

22d Ques. by same. To what extent were the cans filled with the meat?

Ans. They were what we called two-pound cans. We would fill them as full as we could pack them.

23d Ques. by same. How was this pressure that you have mentioned applied to the meat in filling the cans?

Ans. It was done by women who worked for me—putting it in, pressing it in with their fingers as long as they could get any of it in, until they got the pound and a half in; that would fill the can chock full.

Cross 52 Ques. by same. Then your so-called two-pound cans were just simply filled to their natural capacity. Am I right?

Ans. It was.

Cross 53 Ques. by same. Then the meat was in that condition that it would naturally be when, for instance, a pound and a half of meat was filling a space it would naturally fill? Am I right?

Ans. Yes, when it is cooked.

Cross 54 Ques. by same. Then yours was not a compressed meat or one where the pound and a half was reduced by force and compression, so as to occupy less than this space that the pound and a half of meat would naturally fill, was it?

Ans. Well, I suppose that we could have got a little more in by putting a press on it, we packed it as tight as we could, and shook the cans to enable us to get in the pound and a half.

Cross 77 Ques. by same. I understand you, then, to say that the manner in which you have put up beef in Calhoun Lane did not produce an article compacted and compressed like the Wilson beef. Am I correct?

Ans. I don't think it did.

Even such as it is, this evidence is not to be relied on.

Re-Cross 85 Ques. by same. Will you examine the paper now shown you and state whether the signature thereto is yours or not?

Ans. Yes, sir; that is my signature, and I say the same now. The gentleman that got me to sign this paper told me Mr. Wilson pressed his beef in his cans. I told him I did not. That is how I came to sign this paper.

Re-Cross 86 Ques. by same. Then the statements in this paper are correct, are they not?

Ans. That is correct. That is my signature. That gentleman told me that Wilson pressed his meat into the cans; I told him I never pressed my meat only by hand.

Waltemeyer had given us a statement, after seeing some of the Wilson meat, in which he says that his was not like the Wilson article. By an inadvertence the affidavit does not appear on the record. It is submitted, however, that enough appears from the foregoing quotations to show the character of the previous statement of the witness.

The correct description of *all* the steps used by Waltemeyer is given by SPENCER J. ROBINSON, as follows:

Complainants' Record, p. 815. Ints. 5-15.

1st Ques. by same. What is your name, age, residence and occupation?

Ans. My name is Spencer J. Robinson; I am 41 years of age, and reside in the city of Baltimore; I am a packer of hermetically sealed goods.

2d Ques. by same. From 1867 to 1872 where and with whom were you employed, and in what kind of business?

Ans. In Baltimore, and with Jacob Waltemeyer. In making myself generally useful in the factory, in keeping books, etc.

3d Ques. by same. Were you or not acquainted with the process followed by him in the canning of meats while you were there?

Ans. I was sir.

4th Ques. by same. Was beef canned while you were in this factory?

Ans. My impression is that beef was packed. My mind is not quite clear as to beef; it is as to mutton.

5th Ques. by same. Please describe the treatment which the meats received before they were put in the cans?

Ans. The meat was cooked in bulk, very nearly done, then cut up in small particles, sufficiently large to go in the hole of the can only; the water in which the meat was cooked was used for filling in on the meat in cans, the only addition being made to it was the adding of a little salt in order to produce a flavor.

6th Ques. by same. How much of the liquor was put into a can, as near as you can describe it?

Ans. The exact quantity I cannot give, just sufficient to cover the meat

7th Ques. by same. How was the meat put into the cans? By what means or instruments?

Ans. No instrument was used. Simply put in cans by the hand.

8th Ques. by same. Was there any pressure or compacting used upon the meat either in putting it in the cans, or after it was put in there?

Ans. There was not.

9th Ques. by same. Please describe the condition of the contents of the can of meat as to solidity, after the cans were closed?

Ans. Well, on opening the cans—turning out contents, they would be in about the same condition as when placed in the cans, except the meat would be a little more or better done.

10th Ques. by same. What would be the effect upon the contents, or what effect would you notice, if any, on shaking one of these cans in your hand before it was opened?

Ans. In warm weather the can would shake as any other canned goods

not packed solid. In cold weather, especially freezing, this might not be the case.

11th Ques. by same. Will you please state how the contents of these cans of meat would turn out upon a dish or platter, when emptied from the can on to such vessel?

Ans. There would be no change in the appearance of the particles.

12th Ques. by same. Under such circumstances as referred to in the last question, would the pieces cohere together, or fall apart?

Ans. They would fall apart.

13th Ques. by same. Was there any other process than the one you have described for putting up meats of any kind while you were in this Factory? Beef, veal or mutton. If beef was put up during this time?

Ans. Not to my knowledge.

14th Ques. by same. If a different process had been pursued in the putting up of beef, would you or not have been aware of it during the four or five years that you was there?

Ans. I rather think so.

15th Ques. by same. If beef was put up while you were there, have you any doubt in your mind but what you have described the process under which it was packed?

Ans. I have not.

Also by

Oliver Perry Price, *Comp. Rec., p. 825. Int. 10.*

10th Ques. by same. Were you acquainted with the meats packed by Jacob Waltemeyer when he was with John T. Mitchell, and if so, please describe them as you have in your answer to the former question?

Ans. I was acquainted to a certain extent. Our house was in the habit when they run out of meat at times of buying or borrowing from John T. Mitchell & Co., meats which were of the same character as the meats put up by our house. They were put up in the same manner as described in my answer to the previous question.

The Packing by Clapp and Bridgman at Houston, Texas.

The fact that meat was packed in cylindrical cans at Houston, Texas, by this firm, is not denied.

The meat was first cooked under the provisions of the Lyman Patent, before discusssed, in this brief.

The *bones were removed when the meat was in a raw state.*

A part of the meat was cut up in the form of steaks or strips. A very little was put up in that way, however.

The very much larger portion was put into the great drying oven of the Lyman process and dried and cooked, by roasting at the same time. It was then chopped up very fine [from the size of a wheat kernel to that of an oat], and then rammed into round cans by a press. There was a large pan at the bottom of the roaster and drier, and into that dropped the tallow of the meat as it exuded in consequence of the heat. This fat or tallow was put back into the cans of minced meat, either before or after they were put under the press.

No moisture or juice was ever found in the drip pan. It was all evaporated by the heat and carried off by the draught of the drying and roasting oven.

The tallow was found in a melted state in the drip pan, and this was poured back from a pitcher into the cans, either before or after they were filled.

I will quote only from two of the five witnesses introduced, one was a workman in the Clapp & Richardson factory, the other is Richardson himself. They both describe the process.

It is admitted by Richardson that the tallow was put back into the cans, but the other witnesses [workmen and boys], do not seem to have known that that was done.

William Hartung, Respondents' Record, p. 540

Ques. 9. Please describe this process as fully as you can?

Ans. The beef was first slaughtered—then taken into the cutting room, where the meat and bones and sinews were separated; the meats sliced in long strips, the choice pieces, such as tenderloin and tongue, were kept separate. It was then put in the vacuum chamber for the purpose of cooling, or taking out the animal heat. From there it went into a sheet iron oven for the purpose of cooking it with hot air. This is as far as I can describe of my own knowledge.

Ques. 10. Did you learn from others in the establishment what was done with the meat after it was cooked?

Ans. Yes.

Ques. 10½. Please state what was done with it, as you so learned?

Ans. After it was taken out of the oven it was seasoned with salt and pepper, and the major part of it ground in a meat cutter. It was then put in tin cans, pressed down until full, then the top was soldered in the can, closing it; it was then put in a vat of hot steam and re-cooked; we afterward used water, as the cans burst in the steam bath. It was then ready for market or considered so.

Joseph A. Richardson, Respondents' Record, p. 579

Ques. 6. Did you use any other mode of preserving or packing meats?

Ans. We made a business of preserving by the Lyman process. We never made a business of the other further than to test the process.

Ques. 7. Was the Lyman process patented?

Ans. Yes, sir.

Ques. 8. Whose patent?

Ans. A. S. Lyman is my recollection.

Ques. 9. In brief, what was this Lyman process?

Ans. The meat cut from the bone as soon as killed, suspended in a receiver, the air pumped from it to a high vacuum, thus speedily cooling the meat and removing much of the animal gases, then suspended in an oven and

roasted or baked with hot air passing through the oven. It was then passed through a cutter or grinding machine; then pressed compactly into cans. The cans placed in boiling hot water after being sealed—heated to the boiling point—the air let out through a punctured hole in the top of the can, then hermetically sealed, and permitted to cool. We sometimes pack meat by the same process, without passing it through the cutting machine, generally putting some of the cut meat into the can with that not passed through the cutter, so as to compactly fill the can. We sometimes put the uncut meat in cans without any of the meat that had been through the cutting machine.

We got a high vacuum and a very cold temperature very quickly by having a small receiver attached to a large one in which the meat was placed, and the smaller one partly filled with coke or some porous substance saturated with sulphuric acid, through which the air was pumped from the larger receiver.

Ques. 10. What did you press the meat into the cans with?

Ans. We had a press for that purpose run by the machinery.

The evidence of Richardson is important in one particular. It shows that when packing roasted meat by pressure exerted upon the contents of the cans before closing them, that the interstices between the pieces of meat cannot be closed unless a liquor is poured in to fill these spaces.

So that, when we regard the Lyman process as a process to can meat without chopping up, and without entire destruction of the "*grain* and *integrity*" of the meat, it becomes nothing more or less than the old De Lignac Patents to which we have hereinbefore referred in their order.

That is, meat is *desiccated*, then rammed into round cans and then the spaces between the several pieces *filled in* with a liquid that will readily *run into* them.

In other words, when you have both dried and roasted the strips or steaks of the Lyman Patent, or the small chunks of the De Lignac Patent, as provided in both of these Patents, the surfaces of the several pieces have become *so hardened* that when pressed into a can, *with any practicable pressure*, consist-

ent with the strength of a tin can, you cannot form them into a homogeneous mass or artificial cake of meat, as you can when the meat is rendered soft and plastic by boiling preparatory to pressing into the cans, as specified in the Wm. J. Wilson Patent.

The experience of these Texas packers proves this, and it is a great fact in favor of our Wm. J. Wilson Patent. It exhibits its novelty and usefulness in a new and clear light. In fact, this evidence of the Clapp & Bridgman packing in Texas tells very strongly in favor of the value of the William J. Wilson Patent.

Mr. Renwick makes some very just observations on this subject, and it is a singular fact, that, although the Respondents after his testimony was taken, put an *expert* on the stand, they never attempted to answer the position he took as discriminating the Wilson Patent, both from the Lyman Patent, and the Texas packing of Clapp & Bridgman, under it.

Ans. I have made the comparison required with the following results: the invention recited in the said Lyman Patent is divided into two portions, the first of which relates to a process treating of raw meat, so as to remove the animal heat, and what are called by the patentee, "the decomposing products of the normal waste"; this process has nothing in common with the improvements of the Wilson Patents mentioned in the question; the first portion of the invention further has reference to the meat treated by the process as an article of manufacture, the meat being in its raw state; and this part of the invention has nothing in common with the improvements recited in the claims of the Wilson Patents referred to in the question; the second portion of the invention described in the Lyman Patent "relates to a new and improved mode of preparing and preserving roast beef in a condensed or concentrated form." and embraces also the article of manufacture produced by the process; in addition to the said two divisions the patentee describes in his claims a process which is a compound of the two processes described in the said two divisions; the process of the second division of the said Lyman Patent and the said compound Lyman process differs substantially from that recited in the first claim of the William J. Wilson reissue, as restricted by the disclaimer, in the following respects: according to the said Lyman Patent,

the meat is roasted in an oven, which is a substantially different cooking operation from that of boiling required by the said Wilson process; the former tending to harden the meat at the surface and diminish its plasticity and capacity to pack in a solid cake, and also tending to cause the meat to adhere more strongly to the bones, instead of facilitating the separation of the meat from the bones as boiling does; the roasting also tending to dry the meat; according to the said Lyman Patent the meat was not only roasted, but was condensed, and its juices were concentrated by the action of a current of dry warm air during the operation of roasting; this differs substantially from the process required by said first claim, because the presence of the water in which the meat is boiled would practically prevent such drying and concentration.

Speaking of the meat packed by Clapp & Bridgman, he says:

Ans. I have examined the deposition of the witness, Richardson, as printed in the defendants' record in these cases; I understand from it that the greater part of the meat which was put up as testified to in that deposition was put up according to the Patent of A. S. Lyman, No. 91,552; all of the said meat being roasted in an oven in a current of hot or warm air, a portion or all of the meat in each can of the said greater part put up being reduced by a cutting machine was to be disintegrated; I also understand that the only kind of can used in packing the said meat was a round can with flat heads; so far as the said Richardson deposition describes the process practiced in packing the said greater part of the meat, the product thereof, and the form of the can in which it was packed, it does not, in my opinion, describe or suggest either the process recited in the first claim of the William J. Wilson Reissue No. 6,370, as restricted by the disclaimers, or the article recited in the second claim thereof, or the article recited in the first claim of the Patent of John A. Wilson Reissue No. 7,923, or the article recited in the third claim of the said John A. Wilson reissue; my reasons for this statement are the same as those I have given in my answer to question 40 in reference to the processes described in the said A. S. Lyman Patent No. 91,552.

I understand, however, from the deposition of said Richardson that he "to some extent" (Cross-Int. 72), put up or caused to be put up, the roasted meat in the form of what he called steaks or strips, without any cut-up meat, in the can; but I also understand from Cross-Interrogatory 201 that in such case he could not fill the can with the steaks or strips, and that the space in the can which was not occupied by the meat was in such case filled by drippings poured in by a pitcher, and that the drippings were principally tallow; the portions of the Richardson deposition which make these facts plain to my mind are the following cross-interrogatories and answers, viz.: Cross-Int. 99, Cross-Int. 127, Cross-Int. 204, Cross-Int. 219, Cross-Int.

201, Cross-Int. 110 and Cross-Int. 113; the process by which this meat was put up, to some extent as stated by Richardson, differs substantially from the process recited in the William J. Wilson Patent as restricted by the disclaimers in the following respects: the said meat described by Richardson was not boiled as required by the said Wilson process, but was cooked in a substantially different manner, viz.: by roasting with its attendant disadvantages, as previously mentioned by me, the meat also being dried by a current of air during the process of roasting; the said process described by Richardson further differs from that required by the said Wilson Patent in the respect that the meat was not compressed into a solid cake so as to fit the can, but there was superadded to the pressure a partial filling of the can with drippings composed principally of tallow, which filled the interstices of the roasted meat and a portion of the space of the can above such meat, left vacant in the process of compressing, because of the practical inability to select steaks which, when compressed, would just fill the can.

The article of manufacture testified to as produced to some extent by the said Richardson, differed substantially from that recited in the second claim of the said Wm. J. Wilson reissue, as restricted by the disclaimers, in the respect that the meat, instead of being cooked by boiling, was cooked by roasting, and was dried in the process of roasting by a current of air; also in the respect that the meat did not form a solid cake in the package; the mass in the cans, as testified to by Richardson, as I understand his deposition, consisting of compressed meat and dripping, mainly tallow, instead of a solid cake of compressed meat.

Now these propositions were open to counter proof both when Morton and Brevoort were put on the stand by Respondents.

Richardson, the Respondents' witness, and one of the firm, having a license under the Lyman Patent admit in substance what Mr. Renwick states as to the packing of the steaks or strips of meat.

Cross-Ques. 201. Did you, in fact, fill your cans as perfectly with the strips or steaks alone, as you were enabled to do, with the ground meat or the ground and steaks combined?

Ans. Probably not quite as perfectly, but sufficiently so to preserve it.

Respondents' Record, p.

Cross-Ques. 203. Did you ever practice the packing of meat into cans, in this packery of yours, wherein the meat was compressed into the can so as to form a solid cake in the can, saving all the nutritious values of the meat

without the placing back into the can, or into the meat before going into the cans, certain of the exuded juices or drippings?

Ans. The rule was to return the drippings of the meat in some form to the meat before grinding, if ground, or to the can before putting in the meat if not ground.

Cross-Ques. 204. In this packing of yours which you have described, did you ever practice putting the meat into the cans, and compressing it so that the meat of itself would entirely fill all of the spaces of the can perfectly and completely, except in the instances where ground meat was used? I mean, did you ever in the packing of the steaks by themselves, completely and perfectly fill the cans, unless the drippings or ground meat were also put into the can?

Ans. I don't recollect any test of that kind that I can refer to, the rule being to put the proportion of drippings into the can with the uncut meat.

Respondents' Record, p.

The uncut meat, or strips or steaks could not by pressure therefore, be made to fill a can so as "*to form a solid cake*" of the Wilson Patent—*they had to pour in tallow*, to fill up the spaces.

He says *they could preserve it* by bathing and venting without pouring in the tallow.

This is no news, Durand. Wertheimer & Gunter had done that sixty and thirty years before.

But it seems Richardson & Clapp and Bridgman *wanted to fill* the *cans*. They could not do it with the strips or steaks without *pouring in liquid to fill spaces that would exist, after roasting the meat*, between the different steaks.

Filling the can appears to have been very desirable to these Texas packers, and they never succeeded in doing it *except by disintegration* or desiccation of their meat, *or both*, and then by adding a liquid tallow to the meat, whether in the form of steaks or minced meat, to fill up air spaces in the cans otherwise left filled with air, or a vacuum.

Mr. Richardson admits this, and as a proof that he thought and knew it to be an important distinction between his canned meat and that of the William J. Wilson Patent, let the Court observe that HE NEVER DISCLOSED THE FACT OF THE POURING IN OF THE TALLOW UNTIL IT WAS DRAWN OUT OF HIM IN THE CROSS-EXAMINATION.

That such an article must be greatly inferior to the Wilson meat, is very plain to common knowledge.

These Texas men were getting their cattle for nothing. Azel S. Lyman [the patentee of the Lyman Patent] states this :

> I should here, perhaps, remark that beef in Texas then cost us nothing; I went to an adjoining packery, as they call it, and there were perhaps forty steers hanging there that I considered very fat; they were cutting them down and cutting out the hams and some other lean meat, and loading them on to wheel-barrows, and wheeling them on to a pile of bones, and I remarked to Colonel Fulton that they ought to be arrested for wasting valuable meat; he turned to Captain Hall and told him that I thought he ought to be arrested; Captain Hall came to me to explain; "Why," said he "there is not fat enough in that lean meat that we wheeled up there to pay for tanking; it will take up just about as much grease in the tanks as they will give out;" all the rest of the carcass they were boiling for the fat, and he thought I was finding fault because they were wasting fat in this lean meat—the round and loin; when I explained he said he would deliver all that lean meat there to our works; first cut from the bone, and the fat cut off the best of the meat only; he would deliver us for one cent per pound, while yet warm; within an hour after the steer was knocked down; I went back to our works and told the foreman what an offer I had; his answer was, "We ain't a going to give no cent a pound for meat, for we make a little money on our cattle before we come to the meat; the hides and fat pay some profit."
>
> *Respondents' Record, p. 668*

Why did not this packing then succeed as the Complainants' has done in Chicago, where cattle *do cost somethings?*

We shall see soon.

But I wish now to mark as clearly as I can the distinction between this Lyman process, as here put into practice, under

the personal supervision of Lyman himself, and the William J. Wilson process.

1 Clapp & Bridgman took out the bones from their meat while it was in the raw state.

This they were obliged to do, as explained by Mr. Renwick, because their drying and roasting process increased the adhesion of the meat *to* the bones over the natural adhesion.

2 Their method of cooking dried the meat and *tried out the tallow.*

They could pack neither steaks or minced meat after this method, so as to fill a can, except by returning the tallow into the cans. They had nothing else *to* return. The liquid juices had *been all evaporated.*

3 This Texas packing illustrates the inherent defects of the Lyman Patent, and does more to establish the Wm. J. Wilson Patent than any evidence in the case.

It proves one of the original propositions of this brief,—that prior to the Wm. J. Wilson invention, preservation of meat was always accomplished, and only accomplished *by the sacrifice of the thing preserved in one of three ways.*

a Either by the sacrifice of the nutritive juices of the meat [as in De Lignac and Lyman Patents].

b Or by entire separation of the juices from the fibers of the meat

[as in Durand, Wertheimer & Gunter Patents].

c Or by *both* disintegration of the fibers and drying out of the meat juices

[as in the Lyman Patent].

d To this list I could add the mixture exhibited in the Clapp & Bridgman packing of meat, where the finely chopped meat, saturated with the melted tallow, is used *as a packing* for the dried up steaks, to keep them in form and fill up the interstices.

None of their meat was put on the market except the minced, and this was dry hash.

There was no uniformity in the manner of packing the desiccated steaks.

Richardson, *Respondents' Record, p. 600. Int. 135.*

They were separate pieces squeezed into peculiar shape by the pressure in the can.

Richardson, *Respondents' Record, p. 592. Ints. 86-88.*

Of the steaks there were put up from three to five hundred cans only.

Of the hashed meat between 5,000 and 10,000 cans, that was all.

Richardson of course extols the quality of his meat.

This 5 or 10,000 cans was sent to the port of New York where it remained for a long time, and was finally sent to Paris to supply the wants of the starving population after the siege during the German war.

It was taken by a committee of The Paris Relief Commission in Boston, and devoted to this charitable purpose.

Samples of it however were exhibited in Boston, and came to the attention of several firms there, whose depositions were taken by the Complainants. From these we learn of the quality

and character of the meat. There was an agent by the name of Chas. E. Folsom appointed for the sale of the meat in Boston, and Complainants took his deposition. Certainly he could be trusted to say nothing more of the meat than the facts compelled him to do.

By these witnesses we are now to learn that this meat was a dry, hard, crumbling mass in the cans, and that it was imperfectly preserved, and was manifestly an unsalable article, that it did not keep.

If this proves to be sustained, we shall claim this to be an unsuccessful experiment under the Lyman Patent, failing either from the lack of skill of the men who tried the experiment, or, from some inherent defect in the process itself.

Richard Hill, *Comp. Rec., p. 458. Ints. 5, 9, 10*

describes the meat as chopped up finely like sausage meat, and very dry.

Geo. H. Phillbrook, *Comp. Rec., p. 462. Ints. 4, 5*

gives the same description of it.

Geo. E. King, *Comp. Rec., p. 466. Ints. 9, 10*

says the same.

Chas. E. Folsom jr., *Comp. Rec., p. 472. Ints. 16, 19, 20, 20*

also describes the meat as very fine and so dry as to be unfit for eating until after it had been moistened.

Chas. E. Folsom, the agent for the sale of the meat, testifies of it as follows:

Int. 23. Please describe the condition of the meat as to its hardness or solidity, and also as to its fineness or coarseness?

Ans. It was cut very fine; about the size of large grains of gunpowder, and very uniform in size. It was not very solid in the can, but it was quite hard after standing some time, and quite dry.

Int. 24. Will you state whether there appeared to be in the meat a sort of glutine or gelatine, which, after standing some time, would harden; or was there not anything of this kind?

Ans. I don't remember of seeing anything of the kind.

Int. 25. When you opened the cans, was there any vacant space between the end and the top of the can inside; and if so, about how much distance?

Ans. In the first place the cans were full, but occasionally we would find a can with the top rounded. Bridgman told us not to use or sell those cans, as the meat would probably be bad, and I think his explanation was that the gas of the meat had generated and caused that rise; and on opening some of those cans we found they were bad, and threw them away.

Int. 26. Did you find a considerable number of those cans?

Ans. Yes, sir; I should think an eighth or tenth at least, of those I saw opened.

Int. 27. How many cases do you think you opened cans from? I do not mean all of the cans, but from how many cases do you think you opened cans?

Ans. I should not think more than eight or ten.

Int. 28. Please state whether you found bulged cans from every case that you opened.

Ans. As near as I can recollect, there were some in every case; in some more than others.

Int. 29. Do you remember how many cases you had on hand, or can you give an approximate statement, before any were sold out?

Ans. I should say fifty or seventy-five cases. It is guess-work about it, though.

Int. 30. Was there any meat sold by Mr. Bridgman while it was in your hands? And if there was, state how he obtained orders previous to the time when the whole bulk was sold.

Ans. Most of the meat was sold by Bridgman, who went out and solicited orders. We sold a few cases to friends who came in.

Int. 31. About how much did Mr. Bridgman succeed in selling in that way, if you can make any estimate?

Ans. I should not say over twenty-five cases as near as I can remember.

Int. 32. What disposition was finally made of the whole bulk that remained after the sales to Hill and by Mr. Bridgman?

Ans. All except a few cases we sold were sent to France.

Int. 33. Please describe the occasion of the sending of this meat to France, and for whom it was intended.

Ans. It was sent out in the United States relief ship that was sent out by the United States Commission from here to France; I think in the frigate "Worcester." It was intended for the relief of the French people, who were starving, after the siege of Paris.

Int. 34. Who informed you that this meat was sold?

Ans. Mr. Bridgman.

Int. 35. Do you know how long it had been in New York, and how long you had had yours, before this was sold to the commission?

Ans. I do not know how long it had been in New York. That which we had on hand may have been in the store two months.

Int. 36. What did Mr. Bridgman say about the sale, if anything, when he informed you that it had been sold?

Ans. My impression is that he called and said that a large lot of meat in New York was sold to the French Commission, and wished us to ship our balance with it.

Int. 37. Did you use any of this meat on your family table out at Dorchester?

Ans. I did.

Int. 38. How was it prepared for the table by you?

Ans. Usually by putting it in a stew-pan and putting water with it, and warming it up on the range.

Int. 39. Were there any directions to that effect accompanying the cans?

Ans. I don't remember of ever seeing any directions on the cans, but Mr. Bridgman instructed us how to prepare it.

Int. 40. Were those the instructions given to purchasers of the meat generally, so far as you know?

Ans. I suppose Mr. Bridgman gave those instructions to people he sold to. He did to us, and we did to those few cases we sold.

Int. 41. Was the meat which you opened and used in your family fit for eating in the condition in which it was when taken from the can, without following the directions of Mr. Bridgman?

Ans. I suppose it could have been eaten, but we never tried it in that way.

Int. 42. Would it have been palatable and agreeable to the taste.

Ans. I think not.

Int. 43. What was done with the cans that remained in your house in Dorchester?

Ans. They were on a shelf in the cellar in the closet, and after we got tired of using it they remained there until, when we moved, we fed them out to the hens. I should think the balance remained about four years.

Int. 44. In what condition did you find the meat at that time; did you find it fit for food?

Ans. I did not see it at all; but those that opened it told me that it was very dry and spoilt—good for nothing.

This is the full history of the result of this Texas packing and the quality of the meat. It was at best a doubtful experiment, the parties all failed, and the enterprise was after this abandoned.

I submit that it was an unsuccessful packing and could not in law be used as an anticipation or public use, to the effect of invalidating any patent subsequently issued.

The amount of spoiled cans found in the cases rendered the product non-marketable.

Upon this point we submit the evidence of

E. T. Cowdrey, *Comp. Rec., p. 488. Ints. 4-12.*

Mr. Cowdrey is the head of one of the oldest packing houses in the country.

The testimony shows the "swell head" cans to be cans of

spoiled meat, and that a proportion of them in a case, such as Chas. E. Folsom testifies to, would destroy their merchantable value.

To this instance of packing meat in Texas we reply.

1 It is not the Wm. J. Wilson process or any thing like it for the reasons before given when discussing the A. S. Lyman Patent.

2 It was not the Wm. J. Wilson product for the same reasons.

3 It was an unsuccessful attempt or experiment.

Parkhurst v. Kinsman, 1 Blatch. 494.
Roberts v. Dickey, 1 Off. Gaz. 9.

The Alleged Packing by Wells, Miller and Provost, New York City.

The evidence upon this allegation of the answer, involves about as much contradiction, and exhibits as much of falsehood and false swearing by *somebody*, as is often seen in the same compass in any case.

I think it will be found to be the only conclusion we can make that the whole matter is involved in so much uncertainty as to be ineffective as evidence to show a prior public use of the Wm. J. Wilson process.

The whole controversy hangs:—

Upon the following evidence of Stephen J. Provost.

9th Int. Please describe the preserved meats made by Wells, Miller & Provost, in 1848?

Ans. The first preserved meats we prepared were preserved under the French system; which was cooking the meats, placing them in cans, and covering them with gelatine and gravies and subsequently cooking the cans in a bath of boiling hot water without puncturing the cans; our next system was to cook the meat either by boiling or roasting and packing them in cans, without gravies or gelatine, and cook the cans in a bath of boiling water, puncturing the caps of the cans, after three hours' boiling, letting the air escape, soldering and reboiling the cans in boiling water three hours more.

10th Int. For what length of time did you pack this meat with gravy?

Ans. Six or eight months.

11th Int. For what length of time did you pack under the French system mentioned by you with gravy?

Ans. From one to two years.

12th Int. Between what dates?

Ans. From 1849 including part of that year, and running along about a year or two.

13th Int. What sort of meat was it that you thus packed?

Ans. Beef, mutton, veal, poultry.

14th Int. Please describe the packages in which the cooked beef was placed ready for market?

Ans. The ordinary round tin cans holding from one to two pounds.

18th Int. With reference to the time it was manufactured, when was it sold, about how long thereafter?

Ans. Most of it was sold as fast as packed; there was a great demand for it at that time.

19th Int. Where was it so sold?

Ans. Mostly for the use of the California market and those traveling there; some of it for ship stores.

20th Int. Referring now to the cooked canned beef packed as you stated, without gravy, please state in making this product what was the first step taken with the raw meat?

Ans. We cooked it.

21st Int. If it was boiled beef which you desired to produce, to what extent did you boil or cook that?

Ans. We boiled it until it was nearly in a fit condition to eat.

22d Int. Now, the meat having been boiled, what was done next?
Ans. We cut it up and put it in cans.

[*Mr. Orrick objects to the last part of answer, as not responsive.*]

23d Int. Into what sized pieces did you cut the beef up?
Ans. We cut it up into pieces small enough to go through the stud-hole.

24th Int. Please describe what you mean by the stud-hole?
Ans. I mean the aperture that's made in the can through which the can is filled.

25th Int. Upon what portion of the can did this aperture appear, and about what was its diameter?
Ans. In the centre of one of the heads, and between an inch and a half and two inches in diameter; not far from an inch and a half.

26th Int. The meat—that is, the boiled beef, without gravy—having been cut, as you stated, what was the next step?
Ans. The next step was to pack it into cans.

27th Int. Please describe particularly what was done when the meat thus cut was placed in the cans?
Ans. After the meat was placed in the can it was soldered up——

28th Int. What was done with the meat, having been cut up, as you have stated, in order to get it into the cans?

[*Objected to by Mr. Clifford as already answered, and assuming what the witness has not testified.*]

Ans. The meat was put through the aperture of the can, and pressed down with a stick against the sides of the can, and pressed under the lid with the thumbs.

This was his first account of the alleged packing in this case. It is a curious fact that in the three first statements made by him in this brief extract from his evidence, to wit, in the 9th, 22d and 27th answers, the forcing or driving into the cans was wholly left out.

The counsel of the Respondents objected to his 22d answer, but that did not have the desired effect. At last, in the 27th

answer, the counsel cut the witness short by an interruption, and then in reply to a direct leading question (the 28th), the desired pressure came out. The 27th question was a direct bid for the "pressure," but it took the 28th to fetch it, even then.

This was not a good start for Mr. Provost, to say the least, but it is nothing to what followed as he further ventured on his story and the attempted support of it.

Joseph Farrell was then introduced to corroborate him.

This was the same Joseph Farrell to whose evidence I have before alluded in connection with the name of D. R. Provost. In that he was contradicted in the most positive manner, by five or six witnesses, and was not thereafterward attempted to be resuscitated by the Respondents.

To meet the testimonies of those two men, Provost and Farrell, the Complainants introduced

JOHN B. DANIELL.
EDWIN COLLINS.
EZRA A. EDGETT.
ANANIAS S. EDGETT.
THEODORE MILLER.

These five men were employed in the Wells, Miller & Provost during the years, or part of the years during which Provost says they packed, previously boiled beef, by compression into the cans.

Brief quotations will be made from the deposition of each one.

30th Int. Was there ever any beef boiled before it was put into the cans, during the ten or eleven years that you were in this packing house, not taking into account soups or anything of that kind in this question?

Ans. No, sir; there never was; we never boiled any.

31st Int. Was there ever any of this part roasted or raw meat put into a can after the cover was put on, and through the stud hole?

Ans. No, sir.

32d Int. What position did you occupy during the time that the part roasted meat was put up; please describe your duties?

Ans. I was superintendent of the packing department and helped to pack it, roast it, and get it ready for the tinmen to solder up.

33d Int. What was your department from the time that they changed to putting the meat in raw?

Ans. Superintendent and general foreman of the establishment.

34th Int. Did Stephen Provost possess any practical knowledge of the process of preserving beef or take part in it in that factory?

Ans. He did not, sir.

35th Int. Among whom was the knowledge of it confined?

Ans. Among the workmen of the departments.

John B. Daniell, *Comp. Rec., p. 537.*

5th Int. Please describe the way the beef was put up from the time the meat was laid on the cutting table, until the cans were passed into the bath room?

Ans. The bones were taken out of the meat, the meat was cut up in pieces as nearly as possible of a size; we generally used to cut it a pound and three-quarters, and put the balance for soup; after the cans were filled they were passed over to the smith, to be soldered up; after they had done that, they came under my charge directly for cooking.

6th Int. Please state whether the meat was put into the cans in a raw or cooked condition, and whether there was stock or gravy put into the cans with the meat?

Ans. It was put in raw; there was, as I stated before, about three-quarters of a pound, and the other part was used for soup, to make the can weigh two pounds.

7th Int. What kind of cans were used, and was the cover a whole cover, put in after the meat had been filled into the cans?

Ans. They were what we called open topped cans—all open top them days.

8th Int. Was there any pressure used to compress the meat into the cans, or any sticks, or press, to ram the meat into the cans?

Ans. No ramming; if the meat came up a little above the cover we used to press it down with our hands; if you let the meat stay in the cans, and especially after the soup was in, the meat would rise a little above the tops of the cans, and we occasionally would press it down with our fingers; afterward, we got up the plan of having a strip of tin fastened on to the inside of the covers, so as to press the meat down. when the covers were put on, and then we did not use our fingers.

9th Int. Was or not this the method pursued, from the time you went there until 1851 or 1852; I mean, more especially, cutting the meat up into as large a piece as you could to get the weight, and putting it into the cans raw, and with the soup, and without compression?

Ans. Yes, sir.

Edwin Collins, *Comp. Rec., p. 577.*

Int. 9. In what condition, cooked or raw, was the plain beef which came to the sealing room to have the caps put in?

Ans. Raw.

Int. 10. Can you state whether there was in the cans with the plain beef, any prepared stock or gravy?

Ans. I could not.

Int. 11. Was there any plain beef came into the sealing room, in the cans, as you have described, except in the raw state?

Ans. No, sir; not that I know of, while I was there.

Int. 18. Were there any sticks, levers or rammers to your knowledge, used in the filling room to ram the meat into the cans?

Ans. Not to my knowledge.

Int. 19. When the meat came in in the open top can, what appearance did it present? Did it appear to be compressed or merely packed without pressure?

Ans. Merely packed without pressure.

Ezra A. Edgett, *Comp. Rec., pp. 844, 846.*

Int. 9. Will you state in what condition, cooked or raw, the plain beef came into the sealing room to be sealed up.

Ans. The plain beef came in raw.

Int. 10 Was there anything added to it in the can, any liquid juice or gravy of any kind?

Ans. There was.

Int. 12. Were you ever appointed in charge of the meat preserving department? If so, when?

Ans. I was appointed to that position . . . .

Int 18. Was there any change in the process of preserving the plain beef at that factory during the time you were there?

Ans. There was not, sir.

Int. 19. While you were there, was there any plain beef packed and preserved by this process which I will now state: Beef cut up into large pieces, boiled until fit to be eaten, then cut into small pieces, rammed or pressed into stud-hole cans so as to completely fill the cans, with sticks or levers, while in the cooked state, with no addition of liquid or gravy of any kind, then bathed or processed in the usual way?

Ans. There was not.

Ananias S. Edgett, *Comp. Rec., pp. 853-4.*

5th Int. Did you or not know how the meat was prepared, and in what condition it was put into the cans before sealing up?

Ans. At what time?

6th Int. In 1854 and 1855?

Ans. I did.

7th Int. In what condition was beef packed in the cans, cooked or raw?

Ans. Raw.

8th Int. Was there or not gravy added?

Ans. That depends upon what kind of a way it was prepared; for soup and bouillé, there was a vegetable soup, onions, carrots and potatoes, seasoned with extract of celery seed.

9th Int. Take what was called the canned beef; state, if you please, if there was stock added to the cans of the meat?

Ans. I don't understand the use of the term stock; there was no such term used in my day.

10th Int. I refer to a preparation made by boiling bones and scraps of meat, and thus producing a sort of gelatine or jelly?

Ans. We used nothing of the kind; all such bones and scrap was boiled up and made into ox-tail soup.

11th Int. For the packing of the beef what kinds of cans were used, open top or studded cans?

Ans. Studded cans for beef.

12th Int. Was there any pressure used to compress or solidify the meats into the cans?

Ans. By knocking the cans on the counter, in order to shake the meat as close as possible, so they could get about two pounds into the can.

13th Int. That was all, was it?

Ans. That was all; yes sir.

14th Int. Was or not this meat put into the cans in a raw state?

Ans. All that I processed was.

15th Int. How long did you work on Front street?

Ans. I worked on Front street from the time I went there until they removed to Yonkers, excepting the intervals when I was East canning lobsters.

16th Int. Did you or not work in the room where the meat was put into the cans, a portion of the time?

Ans. I did.

17th Int. Have you any doubt but what you became fully acquainted with the manner of preparing the meat at that place, in accordance with the agreement?

Ans. None whatever, sir.

18th Int. Was there any beef boiled so as to be done, and then cut up and put into the cans?

Ans. In what was known as soup and vegetables.

19th Int. Was it boiled for any other?

Ans. I think not.

20th Int. Was there any beef put up in this way: the meat first boiled to quite or nearly done, then chopped up into pieces small enough to go through the stud hole, then rammed or packed into the can with sticks or rammers, so as to form a solid cake in the can, and without any gravy?

Ans. None that I ever saw while I was there.

Theodore Miller, *Complainants' Record, pp. 625-6.*

It will be seen by reference to Provost's testimony, that he sold this alleged boiled beef to the California trade. This was from 1848, and two or three or four years thereafter, during the California excitement.

Not being able to find any of this packing of Provost's at this

time, and he not producing any, the Complainants next put on to the stand—

Oliver Bryan,	*Complainants'*	*Record p.*	*619.*
John H. Lewis,	"	"	" *630.*
Owen Tyler,	"	"	" *632.*
P. E. Le Fevre,	"	"	" *633.*
Wm. J. Russell,	"	"	" *637.*
James A. Borland,	"	"	" *643.*

Who were men that had been more or less extensively engaged in the California trade, either in supplying ships with stores, or as masters of vessels and accustomed to use canned foods on board their vessels. They were all New York business men who had bought canned beef of Wells, Miller & Provost during the three or four years *in which he says he packed his beef after being boiled, to the exclusion of any other process.*

Now, it is well known, and we have seen it proved on this record, that when beef is boiled before it is canned, it does not then shrink in the hermetically sealing process in the cans, because it has undergone all its shrinkage in the cooking before it was put into the cans.

We have also seen that when meat is put into the cans *raw* it shrinks a very large percentage in the bathing, and exudes gravy so that the whole mass then forms a sort of stew in the cans.

If the meat fully fills a can after it is processed, then the skilled person knows that it was cooked before it was canned and processed. But if it shakes, is loose in the can, has liquid and juices in the can, then the skilled person knows that the meat was either put into the cans raw, or, in the shape of a stew.

Now all of these six dealers, ship chandlers and masters say that the Provost beef was always *slushy* in the cans, had much of the liquid in the cans, and that the cans were not full.

This is positive proof that the cans which these men bought and used from 1849 to to 1853-4 were filled with raw beef before they were submitted to the bathing process, or else put in in the form of a stew previously made. It is positive proof that the beef they bought of Wells, Miller & Provost was not cooked before it was canned.

It is singular that, while according to his own story he was packing beef in no other way than by first boiling it in some vessel other than the can, and ramming in so as to fill the can solidly full of meat, with no loose or exuded gravies, that none of these dealers, etc., ever bought any of that kind of him!

The evidence stood in this way, with this great preponderance [five packers in Provost's factory and six buyers against only Provost himself, and the badly damaged Farrell] against the probability of Provost's ever having packed as he said, when the Respondents obtained leave to put in additional evidence, in the hope that they might put Provost on his legs again.

So they began with Provost again in the same way as before. On the event of his second appearance, however, he stood *self* condemned.

It will be seen by reference to Respondents' Record that on the 20th of November, 1879, when Provost was giving his first deposition, he was asked by me to name "ALL YOU CAN REMEMBER, TOGETHER WITH THEIR RESIDENCES, IF YOU KNOW THEM, AND OF ANY PERSONS COGNIZANT OF THE WAY THE MEAT WAS PUT UP, AND WHO WAS IN OR ABOUT YOUR FACTORY."

141st Cross-Int.

In reply to this he swore he could think of only Rolf [dead], Rumery [dead], and Wm. T. Stevenson, whom I shall overhaul hereafter.

He could not remember the Edgetts [one of whom was at one time foreman in Provost's factory], could not remember Daniell [who was with him as superintendent and foreman for eight or ten years], could not remember Collins [who was in charge of the processing for some years], nor Miller, who was the nephew of Miller, Provost's partner, and who worked a long time in the factory.

Now, thus swearing on the 20th Nov. that he could not remember of the Edgetts having worked with him in his meat packing factory, he had on *Nov. 7, of the year previous* [1878], written the following letter to Ezra Edgett asking him to testify with him in this case.

COMPLAINANTS' EXHIBIT PROVOST LETTER. JULY, 1880.
G. H. E., EXR.

NEW YORK, November 7, 1878.

MR. EZRA EDGETT,
Newark:

Dear Sir,—I think you must have came with us very early in the '50, and my object in writing this is to test your and your brother's recollection as to the system used in preserving meat in our place while you were there.

It is claimed by one or two of the corned meat establishments in the West that the packing of cooked meats or raw meats in a solid condition, so that they will turn out of the can in a solid condition, or pyramidal condition, is new with them, and, therefore, patentable.

My impression is that it was while you were with us that we were packing then both boiled and roasted meats, and made the change to packing meats raw in the cans. And it is also my impression that both yourself and brother are familiar with the facts that they have been thus packed ever since, to a greater or less extent.

They claim that the meats packed have been packed with gravies and soups, &c., up to the time that wisdom came into the world with them.

I hope it will not die with them.

Will you not please give me your and your brother's recollection of this matter—date, &c.

I enclose affidavit made by myself (or rather copy thereof). See if its confirmed by your own recollection, and, if so, write to that effect, or wherein they differ.

Yours truly,

S. H. PROVOST,
226 Front street.

Can anything be plainer than this, that on Nov. 20, 1879, he was deliberately swearing falsely when he pretended, 141st Cross, not to remember anybody but the three he there named?

His cross examination from Cross 96 to Cross 109, on July, 1880, *Respondents' Record, page* , is pertinent.

But his misfortunes were not over when he had faced the Edgett letter.

He enclosed in that letter an affidavit, made by himself, in which he swears as follows:

In 1848 I was engaged in New York City putting meats in cans; my process followed by me then was to cook the meat, then remove it from the bone and pack it solidly in the cans; then the cans were hermetically sealed, and made free from air by heating and puncturing the cans and resealing. I packed it into the cans both while the meat was hot and while it was cold. This process I continued till about 1850 or 1851. The winter of 1850–51 I think, I put up considerable in this way, and sold it regularly to the trade. When the cans were opened the meat came out solid. In the winter of 1850-1851 I began at the same place in the City of New York to put up meat in the following manner: I took the meat from the bone, and, while in the raw state, packed it solidly in cans, then sealed up the cans in the manner already described. When the cans were opened the meat came out perfectly solid, of a pyramidal form, corresponding to the shape of the cans. I put up meats in this latter manner till 1866, and during all that time regularly sold it to the trade. I put up large quantities in this way every year; in some years as much as two hundred tons.

Now here we find him stating that in 1848 he packed cooked beef and *bathed and vented the cans.*

This was what he wanted the brothers Edgett to swear to. But as we have seen, they did not.

In 1870 this same Provost gave an affidavit in the suit Jones et al v. Clark, the green corn preserving case.

In that affidavit he says he began packing in 1846 and "for a few years" packed *without* bathing or venting.

An extract from this affidavit will afford opportunity for comparison with the Edgett affidavit.

I, Stephen H. Provost, of the City, County and State of New York, aged forty-eight years, on oath, depose, testify and say: I am a manufacturer of hermetically sealed goods, and have been engaged in the business since 1846. At this time I was a member of the late firm of Wells, Miller & Provost, of the city of New York, and employed a French workman in the art of hermetically sealing, named Ralf, of the City of Paris, who aided us here in the preservation of fruits, vegetables, etc., for this market by the French process, the peculiar feature of which was the preservation of perishable articles for human food in hermetically sealed vessels, by hot bathing, without venting the cans or vessels.

. . . . . .

After working under the French process a few years in the preservation of meats, vegetables, etc., we found it not so reliable as the English process, which consisted in putting up the meats and matter to be preserved raw or uncooked into tin cans, sealing air-tight, bathing a few hours in boiling water, tapping the cans to let out the air, resealing and bathing afresh; and since 1855 I have extensively been engaged in the preservation of sweet corn in its own juice, and in its unripe or green state, and by the process named.

Now we see that in the Edgett *proposed* affidavit of 1878, he represents himself as packing cooked beef, boiled, compressed and both bathed and vented in 1846 and a few years afterward.

In the Corn Case affidavit he was packing "FRUITS, VEGETABLES, ETC.," by the French process the "*peculiar*" feature of which was—"WITHOUT VENTING THE CANS OR VESSELS."

The affidavit of 1878 and sent to the Edgetts was got up for *this* litigation. He swears in his 141st cross answer in his first deposition, that this Frenchman Ralf was with him when he packed the boiled compressed beef. So it was exactly the same time referred to in the Corn Case affidavit and the proposed Edgett affidavit.

Thus the two affidavits disclose two wholly diverse stories. First, in 1870 he swears he packed "fruits and vegetables" in 1848 and years afterward, without venting.

Then in the affidavit sent to the Edgett brothers he swears that he was packing meat at that time, boiled, and *with* venting.

But his self contradictions are not yet all enumerated.

In the sworn and executed affidavit sent to the Edgetts he states that he produced solid meat "OF PYRAMIDAL FORM CORRESPONDING TO THE SHAPE OF THE CANS," and he was soliciting the Edgetts to swear to *that*.

But in his two depositions in these cases, where he was liable to cross examination he never *hints* at the "pyramidal form" of his meat but says it was "*like the appearance of a column.*"

Provost, 1st Dep. Int. 51.

In the Corn Case when he made his affidavit of 1870, the great point was the packing of the kernels of corn *raw*.

Then he, in his affidavit to suit the emergencies of *that* case had *his* articles raw as they went into the cans. In this case our Patents claim putting *boiled* meats into the cans, and the affidavit he sends to the Edgetts says *boiled* meats.

Moreover, we use and our Patent claims a pyramidal can. His cans *were to be pyramidal*, if he could have induced the Edgett brothers to swear to it with him. But he failed, and so gave up the pyramidal form of his cans, when he came to testify.

To say nothing of Provost's advent in the Edgett affidavit, as an evidence procurer for the Respondents, the Edgett letter and affidavit, and the Corn Case affidavit, it must be admitted, do not make his second introduction into the case at all a graceful one.

Notwithstanding all this, the Respondents then proceeded to attempt to confirm Provost by the evidence of other witnesses. This must now be examined.

Under an order of the Court, the Respondents were allowed to re-open their case and put in the evidence of certain witnesses whose names were given in the order.

They failed to comply with the terms of the order of Court and put in the evidence of several persons not named in the order, and of whom, of course, the Complainants had no notice. The taking of the depositions of these was all seasonably objected to, and I now move to strike them all out.

This motion refers to the depositions of

WATSON J. WELDING.
HARRY R. MILLER.
SAMUEL CALKIN.

These witnesses were all introduced to back up in one way or another the statement of S. J. Provost, that he had packed meat by first boiling and then compressing it into cans so as to form a solid cake.

W. J. Welding was a bookkeeper in the establishment. Says he once saw *a* can near the counting-room in which the meat was solid—they were just opening it. Did not know the process by which it was packed.

Harry R. Miller in his business as a ship chandler had opened some of the Provost cans of meat. After he cut the top off, then by running a knife in around the meat to detach it from the can, it would sometimes come out in a whole piece—was roasted.

Samuel Calkin was shipping and delivery clerk of Provost in 1851. His deposition amounts to this, that he never knew of their putting gravy and juices into the cans and supposes that they did not.

These three are of little importance. They had all recently talked with Provost himself or "seen" him, and their depositions have no right to be on the record.

Isaac Kaylor's name was in the order or permission of the Court. We were intending to put him on for the Complainants. By some mysterious influence he changed his views of his own recollection on this subject, and became a witness for the Respondents. It is true he had had "a call" from Provost just ten days before he went on the stand, but of course there is no significancy *in that*.

He had had two interviews with Provost before testifying, and was present when Provost's deposition of June 30, 1880, was given. Kaylor's followed Provost's, and Provost was present when Kaylor testified.

It will appear that Kaylor needed watching. Before the Respondents made their motion to re-open the case and intro-

duce this new evidence, Mr. Evarts, who was employed in the looking-up of evidence by the Complainants, had his attention directed to Kaylor, and in the discharge of his duty called on him and obtained from him a statement as follows:

10th Int. While you were employed in seeing people and making inquiries concerning the subjects involved in these cases, did you visit a man by the name of Kaylor while the Complainants' evidence in reply was being taken, and before the motion was made to re-open by the Respondents?

Ans. I did call on Mr. Isaac Kaylor at No. 40 Courtland street, N. Y., just after Complainants had suspended taking testimony, and just previous to the making the motion to re-open.

11th Int. Will you state what information you derived from him concerning any of the issues of fact in these cans, and what action you took thereon?

Ans. Mr. Kaylor informed me that he worked for Wells, Miller & Provost during the year 1849; that he knew their process of packing meats; that at that time they roasted their meats; I think he said partially, and placed it in the cans with stock; that no sticks or other appliances were used to get the meat into the can, and he was clear in his recollection that none of the meat was boiled previous to being put into the cans; I laid these statements before Mr. Libby first, and I think he communicated them to Mr. Clifford; Mr Kaylor has testified to this conversation with me, and I desire to say about that, that he refused to tell me anything at first unless I paid him $50 in advance; I talked with him quite awhile about that until I saw that I could get no information from him as to these matters unless I paid him something, and I finally offered him a $5 bill as compensation for his time and trouble in posting me as to the matters I inquired about; he hesitated a good while beford he would accept the $5.

Complainants' Record, page 475.

We thought Mr. Kaylor *our* witness until his appearance against us in the Respondents' order.

There can be no doubt but that he made this statement to Mr. Evarts, and if he did what is his evidence worth?

Joseph Stevenson and his wife Ann McGenn Stevenson were also both called upon by Mr. Leland and Mr. Evarts and gave their statements to the effect that no boiled beef was packed

in compressed form in the Provost factory while they worked there.

Both of them had "seen" Provost before testifying for Respondents, but *had not exchanged a word with him on the subject of the packing on Front street.* What *had* changed their minds on this matter after the time they made their statements to Messrs. Evarts and Leland does not appear, for Ann says that she and her husband had never talked the matter over together; not so much as "*one word.*" But their minds *did* change and here is what Ann says about it:—

Cross-Ques. 34. I presume you have talked this matter over with your husband, so as to settle your mutual recollections, have you not?

Ans. No, sir.

Cross-Ques. 35. Have you never exchanged a word with your husband on this subject?

Ans. No, sir.

Cross-Ques. 36. He is present now, is he not, while you are testifying, and you were present while he was testifying?

Ans. Yes, sir.

Cross-Ques. 37. Have you ever stated that all the meat that was put up in the factory of Wells, Miller & Provost was put up raw?

Ans. Well, I will tell you what I said; there were two gentlemen came to my house one night and they asked me some questions about the meat, and I said I thought it was put up raw; but I didn't think at the time; but when I came to remember, I remember putting it up boiled, with these sticks; after they went out and brought in a can of meat and placed it on the table; then I remembered very distinctly what the meat looked like; of course, thirty years is a long way to go back, and I was not very old at the time either; I was no more than fifteen or sixteen at the time I went to work there.

Cross-Ques. 38. Your husband was present at this interview, was he not?

Ans. I think he was asleep when they came in; I can't exactly say; I thought they were gentlemen from Stamford; that they were friends of Mr. Miller, because they spoke of Mr. Miller; and I inquired after him; I didn't think anything else at the moment.

Cross-Ques. 39. Didn't your husband take part in the conversation before the gentlemen left?

Ans. Well, there was not much conversation had; I don't think they were over five or ten minutes there altogether; one gentlemen went out for a can of meat, and then I was speaking to the other gentleman of Mr. Miller while he was there, because I thought certainly they were friends of Mr. Miller's; and the only word that I remember to pass between my husband and them was that my husband asked one of them if he was acquainted with Mr. Provost, and he said he had seen him; that is all I remember that passed.

Respondents' Record, p.

Mr. Evarts' account of the interview is as follows:

6th Int. Please state what Stevenson stated to you was the process used by Wells, Miller & Provost, when he worked for them, who was present, and as well as you remember, what was said concerning said process?

Ans. Mr. Stevenson stated that Wells, Miller & Provost put the meats into the cans in a raw state after first flouring the surface of the meat, sprinkling it with flour, that no pressure was used to force the meat into the can; poultry, he stated, was first cooked and put into the cans with potatoes, but the beef was put in raw; Mrs. Stevenson made substantially the same statements, and took part in the conversation; the only persons present were Mr. and Mrs. Stevenson, Mr. Leland and myself.

7th Int. To whom, if any person, did you and Mr. Leland make report concerning these statements, and for what purpose?

Ans. We made report of the conversation to Mr. Clifford, counsel for the Complainants, in order that he might determine whether to call Mr. and Mrs. Stevenson as witnesses.

8th Int. Soon after this, at what place, if you remember, if any, did the Complainants go on with the taking of their evidence?

Ans. The Complainants adjourned from New York to Rochester within two or three days after this interview with the Stevensons, the remaining time being occupied with other witnesses.

9th Int. Following the testimony at Rochester came the motion of the Respondents to re-open, did it not?

Ans. Yes, sir.

Complainants' Record, page 744.

And the following is Mr. Leland's account:

Ans. For the past three or four months I have been engaged on behalf of the Complainants in these suits in looking up witnesses for the Complain-

ants; and in New York City, on the evening of the 25th of May last, I called, in company with Mr. E. S. Evarts, upon Mr. Joseph Stevenson and wife, at No. 714 Ninth street, and asked him some questions about what he knew about putting up canned beef. He told us that he was in the employ of Wells & Provost, and subsequently with Stephen H. Provost—that they packed meat in cans while he was in their employ, but all kinds of meat were packed raw except poultry, and with that potatoes were put in cooked. He said no pressure was used by crowding into the cans other than by putting it in with the fingers. After talking awhile with Mr. Stevenson, who had made the above statement, he called into the room where the conversation was had, his wife, Mrs. Ann Stevenson, who also worked in the factories of Wells & Provost, and Stephen H. Provost, both taking part in the conversation after she came into the room, and they both were sure and reiterated in the most positive manner that the meat was always put in the cans raw, and no pressure used. During the interview I went to a store near the corner of the street, and purchased a can of the Wilson Packing Company's brand of compressed cooked corned beef. I opened it in their presence, and they both said they had never seen at the factory, or at any factory where they had worked, any meat put up in that solid, compressed shape.

Ques. 5. Please state at what period of time Mr. and Mrs. Stevenson told you they were familiar with the canned meat goods put up by Wells & Provost and Stephen H. Provost, and how they became familiar with the process and kind of canned meat goods put up by these parties?

Ans. My best recollection is that they were in the employ of Wells, Miller & Provost, and the firm succeeding them in the same business, Wells & Provost, and Stephen H. Provost, covering a period of from sixteen to twenty years. My best recollection is that Mr. Stevenson covered that period and Mrs. Stevenson some shorter period.

Ques. 6. Please state whether or not you have given your answer in regard to the statements made by Mr. and Mrs. Stevenson at the time and place indicated by you solely from memory; if you have refreshed your recollection by any means, please state in what manner?

Ans. Immediately after the interview, upon my arrival at my hotel, I made a memorandum of the substance of the conversation, which I have given above, and I have the memorandum in my hands, and have given my answer by referring to it.

We lost also another witness in the same mysterious manner. His name is ALEXANDER HAMILTON.

Mr. Hamilton was not as good for the Respondents as he

ought to have been; because having "seen" Provost "*about four*" times before testifying, he ought to have been well prepared, but under the aid of, and by the great exertions of Respondents' counsel, he at last rose to the emergency.

At first however he had *gravy in the solid cake of meat*, and was stubborn about it. But at last, he and the counsel of the Respondents, after a somewhat earnest effort, *got the gravy out*, in this manner:

Ques. 17. You have said, Mr. Hamilton, that there was some gravy put into the cans with the meat when the French process was used; and you have also said that there was no substantial change made afterward; but did they put gravy into the cans after they packed it solid in the stud hole cans, and adopted the English process; or did they only put some little seasoning in, leaving the meat dry in the cans just as it was cut up after being boiled?

[Objected to as leading, as stating things which the witness has not testified, and as putting words into the witness' mouth and describing a process which he has not in his testimony yet described, but, on the contrary, has said was not used.]

Ans. There was a little gravy, and a little pepper and salt to make the seasoning.

Ques. 18. Now, are you quite certain that there was any gravy put into those cans after they canned it and packed them solid in the stud-hole cans, or was there only pepper and salt for seasoning, the gravy being omitted?

[Objected to as in the nature of cross-examination; and because the witness has once stated that there was some gravy put in with the seasoning; and as being an attempt to make him withdraw his statement.]

Ans. TAKE THAT GRAVY OUT, nothing but pepper and salt; it is a good many years ago to remember these things—thirty-two or thirty-three years; it jogs your memory a good deal.

Ques. 19. Now, after thinking this matter over (and you have already stated that that meat came out of the cans solid like head-cheese) which way was it, according to your best recollection, packed solidly in the cans without gravy, with only some pepper and salt for seasoning, or with gravy, as you at first recollected?

[Objected to as leading, and as cross-examination, because the witness has not had any time for reflection as stated in the question, this question immediately succeeding the other.]

Ans. I DON'T UNDERSTAND THAT QUESTION.

Ques. 20. The question is, was gravy put into the cans when they were filled, after they stopped using what you have called the French process, or was there only pepper and salt put in for seasoning, leaving the can solid, full of boiled meat; that is the question?

[Objected to as leading, and for the reasons stated in the foregoing objection.]

Ans. To the best of my recollection there was a little gravy, beside the pepper and salt, put in.

Ques. 21. That is into all of it, or did they leave that out of some of it, as you have said before?

[Objected to as attempting to make the witness change his statement, when he has already testified that he has made it according to his best recollection.]

Ans. I don't think I made that statement, sir.

Ques. 22. You don't quite understand me, I think?
Ans. No; I don't.

Ques. 23. I understood you to say, in one of your answers, that you thought they left the gravy out of some, putting in only pepper and salt for seasoning, leaving the meat dry, so that it came out of the can solid; now, what is your best recollection about that; did they leave the gravy out of some of it?

[Objected to because not correctly representing the witness' answer, and because he has twice stated that to the best of his recollection a little gravy was added to the meat in all cases.]

Ans. Well, to the best of my knowledge, during the English process a little gravy was added always.

Ques. 24. Perhaps we misunderstand each other as to what was called the English process; now wasn't there cooked meat put up there part of the time during the time that you worked there, and didn't you state to me just before coming in that there was meat put up during part of the time that you were there—boiled meat—packed solidly in cans without gravy; now, if so, please state when that was?

[Objected to, because the witness has three times stated that to the best of his recollection, in all the meat put up while he was there, there was a little gravy added in the cans; and as being an attempt in the nature of cross-examination to make him retract that statement.]

[Counsel for the defendant will say that he is of the impression ahat there is a misapprehension on the part of the witness or upon the part of the counsel who just made the above statement as to the meat having been put up with the gravy during all the time that he was there. That misunderstanding is in reference to the process called the English process; and this question is asked for the witness to make a statement in answer to the point inquired of in the last question.]

Ans. As to the date of that, I could not be very positive what date that was; but to the best of my recollection it was in 1850.

Ques. 25. Then in 1850, according to your best recollection, there was some cooked meat that was packed solidly in cans without any gravy being put in, as I undersand you?

[Objected to as leading.]

Ans. Yes sir.

Ques. 26. Now, do you think that was continued to be put up more than one season; I mean continued to be put up in cans without gravy?

[Objected to as attempting to obtain a reply from the witness different from the one just previously given.]

Ans. I could not say, because I left before the next season came on.

Ques. 27. Then, when you say 1850, do you mean—
Ans. The winter of 1850.

Ques. 28. In the fall of 1850 and winter of 1851.
Ans. Yes, sir.

Ques. 29. When did you leave the employ of Wells, Miller & Provost?
Ans. In August, 1851.

Ques. 30. Did you know a Mr. Rumery there?
Ans. I did.

Ques. 31. What did he do?
Ans. He was foreman over the preserving place—tin shop.

Ques. 32. Was it under his administration that the meats were put up solid, in cans without gravy, that you have spoken of?
Ans. Yes; when there was pepper and salt put in.

Ques. 33. About when did he come there, do you think?
Ans. To the best of my recollection it was the spring of 1850.

Ques. 34. You have spoken of the meat canning consisting of seasons; what part of the year constituted a season for canning meat?
Ans. Generally from the latter part of November until February.

Ques. 35. Then, as I understand you, the next meat-packing season after Mr. Rumery came there, the meat was put in the cans solid, after being boiled, and with no gravy, and only pepper and salt for seasoning—making the can solidly full of boiled meat?

[Objected to as leading, and because the witness has not stated that it was the season following the coming of Mr. Rumery.]

[Defendant's counsel says that the witness has stated that it was the latter part of 1850 and the first part of 1851, that this meat was put up in this way, and that his recollection is that Mr. Rumery came there in the spring of 1850.]

Ans. That is correct.

Ques. 36. Now if Mr. Rumery actually came there in the spring of 1849 or the summer of 1849, and was there two meat-packing seasons before you left, may not the meat have been put up in that way during the two seasons while you were there, instead of only one; what I mean is, may it not have been put up in that way after Mr. Rumery came there and took charge?

[Objected to as calling upon the witness to reason, when he is only entitled

to state facts within his own recollection, and because he has already stated that the putting up of the boiled meat was before Mr. Rumery came.]

Ans. I did not say so; I stated that Mr. Rumery, to the best of my recollection, came there in the spring of 1850.

Ques. 37. Well, you don't quite understand the question, I guess, Mr. Hamilton; the question was, that if Mr. Rumery did come there in the spring or summer of 1849, so as to have been there during two meat-packing seasons before you left, instead of only one, as you have stated to be your recollection, may not the meat have been packed solidly, without gravy, during two seasons while you were there instead of one? What I want to get at is, was not the meat packed solidly in the cans, without gravy, according to your best recollection, after Mr. Rumery came there and took charge?

[Objected to as leading, putting words in the witness' mouth, calling upon him to reason and not to state facts, when he has already twice stated that, to the best of his recollection, the meat was put up in 1850, and that Rumery came there in the spring of 1850.]

Ans. Haven't I given you an answer to that before?

Ques. 38. Is it your recollection that the meat was packed solidly in cans, without gravy, after Mr. Rumery came there and took charge?
Ans. Yes, to the best of my recollection it is.

Ques. 39. What was your business; that is, what did you do?
Ans. Soldering up, and in the bath-room.

That was the kind of evidence with which the Respondents attempted to fortify Provost.

But, as I said before, Alexander Hamilton was our witness until from some source or other he got new light, after "seeing" Provost.

He had previously to his deposition above quoted, given to the Complainants a statement as follows:

Alexander Hamilton states as follows:

I worked for Wells, Miller & Provost from 1848 to 1851, in the bathing room. During that time I learned the entire business, being frequently in the other parts of the factory, especially in the filling room. Saw the condition of the meat when it went into the cans. Wells, Miller & Provost did not boil any of their meat before putting it into the can during that time.

ALEX. HAMILTON.

Mr. Evarts, who took Hamilton's statement before he was mentioned by the Respondents, says he read it over to him carefully, and that the affiant signed it deliberately.

Comp. Rec., p. 746. Int. 12.

I have given this evidence somewhat in *extenso*, because it illustrates the complete uncertainty of the evidence attempting to show the Provost packing as like that taught in the Wm. J. Wilson Patent.

After this attempt on the part of the Respondents, in support of Provost, the Complainants put on the stand—

Philander Reed,	Complainants'	Record,	p. 661.
Eugene Sullivan,	"	"	" 668.
U. H. Dudley,	"	"	" 670.
Daniel Webster,	"	"	" 679.
Wm. F. Pray,	"	"	" 686.
L. L. Lombard,	"	"	" 688.
Thomas McDowell,	"	"	" 696.
Simon B. Hunt,	"	"	" 708.
Francis E. Pinto,	"	"	" 722.
T. H. Trowbridge,	"	"	" 758.
I. D. Huntoon,	"	"	" 875.
W. H. Stowell,	"	"	" 892.

All of whom were men familiar as users of and dealers in Wells, Miller & Provost's canned beef from 1848 or 1849, to 1852 or 1853.

Some of these witnesses were shippers of these meats to California and other parts of the world from New York. Many of them bought the canned beef, or used it, in California during these years named [which are the ones in which Provost says he packed the boiled solid beef], and yet, although Provost swears he shipped or sold the most of this beef to the California trade, not one of these men ever saw a can of solid beef with his label on it, during the whole of the same time in which he swears he packed it and sent it to these places.

Why did not the Respondents produce *one* of such men who *had seen or used* one of these cans of solid meat?

THEY HAVE NOT SHOWN ONE.

They produced a *bar-keeper*, Harry Miller, not named in the order of the Court, and he swore he used the Provost beef on his lunch counter, and it came out solid.

This was a slender twig on which to hang a confirmation.

Even that, we, in a measure, contradicted by E. H. Sullivan.

Complainants' Record, p. 668.

Then the Complainants put on the stand Benjamin Chick, who had worked at Provost's, during the time he said he put up the pressed boiled beef.

I believe Benjamin Chick was perfectly honest, but he was so handled by Provost that he does not appear so well as he should have appeared.

On the 4th of June, 1880, he was visited by Mr. Evarts, on behalf of the Complainants, and gave the following statement, which was submitted to me, and I decided to call him as a witness for us.

BENJAMIN CHICK, of Watervleit Center, New York state, states as follows:

I was employed for about eight or nine months during 1851 or 1852, by Wells, Miller & Provost. I was in the room where the cans were sealed, of which Mr. Collins was foreman. I assisted in putting the tops on the cans, and knew what they contained. The meat in them was raw at the time the tops were put on, and I think there was some stock in the can with them. I never saw any meat in the cans which had been previously cooked at all. I don't remember being in the room where the meat was put in the cans, and do not know how it was put in.

June 4, 1880. BENJAMIN CHICK.

Complainants' Record, p. 808.

Unknown to us, Mr. Chick received the following letter about its date.

New York, July 9, 1880.

MR. CHICK :—I want you to come on immediately, and I will pay all your expenses to here and back home again; so make as little delay as possible. Hoping you and Mrs. Chick are enjoying good health.

I remain yours truly,

JOHN IRVINE.

100 Murray Street, New York City.

On this Chick went to New York, and behold! Mr. Provost turned up, took him in charge, took him to the office of the St. Louis Co. there and got an affidavit from him which, after a long preamble and rigmarole, contained in the few last lines a statement that he did not know whether the meats were cooked or not at the Provost factory.

After obtaining this from him he was sent home.

They thought, or Provost probably considered, he had spoiled one witness, who would otherwise go against him. Chick swears he told Provost he had given his statement to Mr. Evarts, and that he could not testify as he wanted him to without telling an untruth.

But Provost got the affidavit and it was of course produced at Chick's examination.

I put in extracts from Chick's evidence so that the Court can judge whether he has not, on the whole, a claim to credibility, when he states that from 1850 to 1852 the beef was packed raw and without pressure in the Provost factory.

It was manifestly the design of Irwin and Provost to entrap Chick.

Long before this, Irwin had named Chick to Mr. Evarts, and he therefore knew how he would testify.

CHICK'S STATEMENT.

Int. 20. Did you see Mr. Provost somewhere about the first of this month? And if so, where?

Ans. Yes sir; in New York City in Chambers street.

Int. 21. How did you happen to go there?

Ans. Mr. Irwin took me there.

Int. 22. Did you have any conversation with Mr. Provost there?

Ans. Yes sir.

Int. 23. What was it about?

Ans. The processing of meat.

Int. 24. Do you mean the processing of the meat at Provost's factory when you worked there?

Ans. Yes sir.

Int. 25. Did he or not ask you whether the meat was put into the cans raw or boiled?

Ans. He did ask me.

Int. 26. How did you tell him the beef was put into the cans?

Ans. Raw.

Int. 27. Have you ever made any statement relative to this matter before now; and if so, when was it, and who obtained it from you?

Ans. I made a statement once to Provost, and the lawyer to whom he took me. I said to them: Gentlemen, I will not make any statement as to the processing of the meat.

Int. 28. When was this?

Ans. Three weeks ago coming Monday, about the fore part of the month.

Int. 29. Did Provost say anything to you about testifying as to how the meat was put into the cans?

Ans. Yes sir.

Int. 30. What did he say about your testifying?

Ans. He said that the meat was put in studded cans, small holed, and that I was laboring under a mistake, that poultry was put in the open top cans, and I made the answer that I don't remember of ever seeing any poultry put in any cans at all.

Int. 31. While you were making the statement, did you say, or authorize the writer of the statement to say, that the beef was put into the cans in any other state than raw?

Ans. I did not.

Int. 32. Did you or not state there to them that the beef was put into the cans in a raw state?

Ans. I told them I had forgotten.

Int. 33. When you stated that you had forgotten how it was put in, did you say anything to Provost or the lawyer about your impression as to how it was put in?

Ans. I told Provost, before we got to the lawyer's, that it was put in raw.

Int. 34. After making the statement did you sign it?

Ans. Yes sir.

Int. 35. Were you requested to make oath to it, and did you make oath to it?

Ans. No sir, I did not. I declined making any oath, and refused to swear to it?

Int. 36. What did you say in this statement as to the position which Mr. Collins had in the factory?

Ans. They did not ask me anything about his position.

Int. 37. How soon after the statement was made did you return home?

Ans. I came home on Thursday, having made the statement on Monday of same week.

Int. 38. Am I correct in understanding you to say that you told Provost and the lawyer that you did not wish, or would not make any statement about how the meat was put into the cans, whether raw or cooked?

Ans. I told them this; it was a long time ago. I had forgotten and could not make a statement.

Int. 39. Why did you tell Provost and the lawyer that you could not make a statement?

Ans. Because I had given my evidence before to Mr. Everett.

Int. 40. Did you mean, when you told them you could not make a statement, that you couldn't make such an one as Provost wanted you to make?

Ans. Certainly. I couldn't make such a one as he wanted me to make if he had given me the whole of New York.

Int. 46. How do you fix the date of 1851 as the time when you were first in Provost's factory on Front street?

Ans. Ever since I have left my father's home, I have been in the habit of putting down in my memorandum book, every Christmas day, where I am living, and I was then living in Wade's house, Peck Slip, N. Y., and while I was living there I worked for Provost, and that is the way I fix it.

Int. 46 1-2. Please state how they treated what they called roast beef at Dayton's, on West street.

Ans. They baked it to make it have the appearance of roast meat, then put in open top cans and go through the process; this baking merely browned it on the outside, giving it the appearance of roasting. They never boiled any; this baking process was continued only a short time.

Int. 47. Is this what you mean when you state in your 45th answer, "raw?"

Ans. I mean it was merely browned on the outside, but it was mainly raw.

[Adjourned to Monday morning, 10 o'clock.]

MONDAY MORNING, August 2d, 10 o'clock.

Examination resumed.

Int. 48. When you went with Provost to make the statement, had you not just before, in Chambers street, told him that the beef which was packed in

his factory in 1851 and 1852, was put into the can raw, and with some stock?

Ans. Yes sir; in Chambers street.

Int. 49. At whose invitation did you come down to New York at this time, when you made this statement?

Ans. I came down at Mr. Irvine and Mr. Provost's.

Int. 50. Who, if any one, wrote you a letter asking you to come?

Ans. Mr. Irvine.

Int. 51. Where did Irvine tell you he would take you, when you went with him from Kemp & Day's place where he was working?

Ans. He told me he would take me to Park row and to Chambers street; that was both houses, I suppose.

Int. 52. Had you or not before this been notified by Mr. Evarts that you would be called as a witness by the Chicago people?

Ans. Yes, certainly.

Int. 53. Did you or not tell John Irvine that you had been asked, and was waiting to testify in behalf of the Chicago people?

Ans. Yes sir.

Int. 54. Did you or not tell Irvine before he took you to Chambers street, that the beef in Provost's factory in 1851 and 1852, was put up raw?

Ans. Yes sir.

Int. 54 1-2. By whom was Mr. Evarts sent to you, and who gave him your name as one who was in Provost's factory in 1851 and 1852?

Ans. Mr. John Irvine.

Int. 55. Did you or not send to Mr. Irvine the same statement that you made to Mr. Evarts when he called upon you some time ago?

Ans. Yes sir; now six weeks ago.

Int. 56. When Provost took you to this room to get your statement, about three weeks ago to-day, why did you state to him that you could not testify about the way the meat was put into the cans? Give your reasons at length, fully.

Ans. I had given my testimony before to Mr. Evarts, and I could not testify as Mr. Provost wished me to do, without telling an untruth.

Int. 57. How, at that time, did you feel about being invited down to New

York by Irvine and taken by Provost to make this statement, after you had told him that the beef was all put up raw?

Ans. My opinion was that Mr. Irvine had sold himself to the St. Louis Co.; he must have done so, because he sent Mr. Evarts to me.

The Complainants regard this as an attempt to so implicate Chick in a contradictory statement, as to render his evidence unavailing for them.

We submit that Chick shows himself to be an honest man, and in the whole affair that Provost appears in a light most unfavorable to the evidence he has put into the case.

The uncertainty of the proof by the Respondents utterly destroys it as evidence of a public use, to anticipate the Wm. J. Wilson Patent.

The Complainants have the preponderance of proof in their favor that Provest's story is false.

But it is not necessary for the Complainants to show, to *prove* absolutely that Provost's story is untrue.

All they need to do is to show that it is at least doubtful.

If in doubt, it has failed to show such prior use as will operate to anticipate Complainants' Patent.

The alleged prior use must be proved by the Respondents, *beyond a reasonable doubt.*

Hawes v. Antisdel, 8 Off. Gaz. 685.
Wood v. Cleaveland Co., 4 Fish. 560.
Parham v. Button Hole Co., 4 Fish. 468-482.
Sayles v. R. R. Co., 4 Fish. 584-590.
Crouch v. Spear, 6 Off. Gaz. 187.
Roemer v. Simm, 5 Off. Gaz. 555.

It cannot be pretended that the Respondents have approached a compliance with this rule. The preponderance, on the contrary, is with the Complainants.

The Alleged Packing by Rumery and Burnham.

Rumery is dead. At the time when this packing is stated by Burnham to have taken place, he and Rumery were in partnership in the packing business at Portland, Maine.

They did an extensive miscellaneous packing business for those times, of which the amount of packed meat was one of the smallest.

Charles E. Morrill, Burnham's present partner, was a boy around the factory at the time Burnham says he packed this meat, and so was called by the Respondents in this case.

It will be observed that Burnham's account of his packing is a very material variation from the Wm. J. Wilson Patent, inasmuch as the *bones were removed from the meat before the boiling.*

As his evidence stands, it does not amount to the Wm. J. Wilson process, because it omits this important specification of the preliminary boiling *in order to facilitate* the removal of the bones and gristle.

But taking his account as it stands, and considering it a process for simply boiling meat and then pressing it into cans, in order to get in the can a certain weight or amount, and without [as he acknowledges] any design to make an artificially formed cake of compressed meat, he is so emphatically contradicted by his own previous statements, by the previous statements of his partner in business, and by the evidence of workmen in his factory and others acquainted with his canned meat,

that it is impossible to believe he ever boiled any beef, before canning it, at all.

This evidence will now be examined as briefly as possible.

I first give Burnham's original deposition in this case.

Ques. 7. State whether the firm of Rumery & Burnham, previous to the year 1864, packed any cooked boiled beef in hermetically sealed tin cans?
Ans. 7. They did.

Ques. 8. To what extent did they so pack this beef, and what disposition did they make of it?
Ans. 8. To quite an extent. Sold it on the Boston and New York market. Principally to Samuel Dayton, New York, and W. H. Davis & Co., Boston.

Ques. 9. Can you state about how many cans per annum the firm of Rumery & Burnham then sold?
Ans. 9. Well, I couldn't say to what extent. To quite an extent, I should say, a 1,000 dozen. We didn't sell so much of that as we did of roast beef.

Ques 10. Please give the different steps taken by them with the beef up to the time it was finally ready for the market. For the purpose making it ready for market. Referring now to boiled beef.
Ans. 10. The meat was first removed from the bone. Then cut into pieces as near as we could guess to the size of the can. Then placed into a kettle of boiling water, and boiled. Then removed from the kettle, weighed, and filled into cans. Then they were sealed, put through the process of bathing, cleaned, labeled and marked.

Ques. 11. Suppose this piece did not fill the can, what was done in this case?
Ans. 11. We cut smaller pieces to make weight, If the piece was too large, we cut off to make weight.

Ques. 12. What means were used to get this meat in the can so that the cover could be placed on?
Ans. 12. We jammed the meat into the can with our hands, then put it under the lever made for the purpose, and pressed it in.

Ques. 13. Did you put anything other than the meat in the can?
Ans. 13. We added a little salt for seasoning.

Ques. 14. What was the usual size of these cans?
Ans. 14. Two-pound cans, full weight.

Ques. 15. What was the general shape of these cans?
Ans. 15. Round cans.

Ques. 16. Was the diameter of the can the same at either end?
Ans. 16. The top of the can was a little the largest.

Ques. 17. The meat having been thus prepared and enclosed in the can, ready for market, when the top of the can was taken off, in what shape would the meat issue from the can?
Ans. 17. The meat would come out whole, and the meat would be the shape of the can.

Ques. 18. Could it then be sliced?
Ans. 18. Yes sir.

Ques. 19. To what extent was the meat boiled before it was put into the can?
Ans. 19. It was cooked pretty well through. We used to judge by sticking in a fork.

Ques. 20. Was it cooked sufficiently to eat?
Ans. 20. Yes sir.

Ques. 21. Have you seen any samples of Complainants' corned beef, that which is called compressed corned beef?
Ans. 21. I have seen it opened in the stores.

Ques. 22. Have you examined it with a view of ascertaining its character?
Ans. 22. I have eaten it.

Ques. 23. Now comparing that corned beef of Complainants with the boiled beef of Rumery & Burnham, which was the most compressed, which the most solid?
Ans. 23. The boiled beef would be the most solid under the same temperature.

Ques. 24. Which was the most compressed?
Ans. 24. The boiled beef would be the most compressed. It would have the least moisture.

Ques. 25. Barring the fact that Complainants' cooked beef is corned, is there any substantial difference between that and the Rumery & Burnham boiled beef?

[Objected to by Mr. W. H. Clifford, as a matter of legal inference for the court.]

Ans. 25. The only difference I could see is that corned beef is boiled a little more before it is put into the can.

Ques. 26. Up to what date did Rumery & Burnham so pack this boiled beef?

Ans. 26. Up to about 1853 or 1854.

Thus we see that the meat was *boned while in the raw state.*

It was then cut into pieces as nearly as could be guessed, of the size of the can.

It was then boiled.

Then removed from the kettle, weighed, and put into the cans.

There was no previous boiling to aid in the removal of bones, etc. No pressing into the cans while the meat was warm and plastic from the cooking.

No boiling where the meat was put into a temperature of 212° Far. at the first.

Burnham R. D., *101, 1st Dep. Respondents' Record, p. 223.*

In about 1869 this same Geo. Burnham gave a deposition in another food preserving case, and testified about his meat packing at that time as follows :

"*Int. 7.* When you preserve meats in cans, how did you prepare the "juices in which the meats were preserved?

"*Ans. 7.* We packed meats raw, without any gravies, with the exception

"of the roast beef; we roasted, and used to make a little gravy for that; but "afterward we gave that up because the boiled meat was better than the "roast.

"*Int. 8.* What meats did you put into the cans raw without any prepared "gravies?

"*Ans. 8.* Beef and mutton.

Davis, Complainants' Record, p. 226.

On March, 1877, this same Burnham gave an affidavit to the Complainants in this case as follows:

George Burnham jr., of Portland, Me., being duly sworn, says: He is a member of the firm of Burnham & Morrill, packers of meat and vegetables at said Portland, and is the Burnham of the former firm of Rumery & Burnham, of the same place and the same business. That he has been in his present business for thirty-one years, and, in the course of the same, has put up many kinds of canned meats, and has seen many varieties thereof put up by others.

That he also has inspected the meat put by the Wilson Packing Co. referred to in the annexed affidavit of his partner, Mr. Morrill, and that he agrees with Mr. Morrill in the opinion expressed by the latter, both as to the novelty and the value of the Wilson article.

He also says this affidavit is made by him, on behalf of the same parties and for the same purpose as Mr. Morrill's, adding that this affidavit refers to cooked corned beef put up by said firms herein named.

GEO. BURNHAM JR.

Complainants' Record, p. 207.

In the above he, it will be observed, refers to his partner's affidavit also given to the Complainants in this case.

That affidavit, thus being made by Burnham a part of his own, is now referred to.

Complainants' Record, p. 835.

He says:

"That he has inspected the article of *cooked meat* put up in solid form in

Int. 1. Your name, age, residence and occupation.

Ans. 1. George Burnham jr.; forty-nine; Cumberland, Maine; packer of hermetically sealed goods.

[Witness requested, before proceeding further, to state in regard to answer eight of his former depositon as follows: That he answered to question eight, when put to him, "to quite an extent, principally to Wells, Miller & Provost, and the moment I answered that, I was asked, 'Did you sell meat to other parties?' and I answered to Samuel Dayton and W. H. Davis & Co. Again, in question 28 I would like to change wherein I was aked, 'Now, from 1854 to 1867, did the firm of Rumery & Burnham pack beef in any other manner than hermetically sealed tin cans?' and the answer is 'Yes sir.' If the question was put as printed it could not possibly have been answered as printed, because I never put up meat in any other way than in hermetically sealed cans. The answer should have been 'No sir.' In answer to question 79 I am made to say, 'It was our design, in cooking, to make the meat come out more solid,' whereas the answer should be, 'It was not our design,' as we had no design about it"].

Complainants' Record, page 247.

Having thus saved himself from the liability of being contradicted by W. H. Davis [a witness afterward examined by Complainants, to show that Burnham sold him no solid canned meat at all. *Comp. Rec., p. 519*], he probably felt secure in his reliance on S. J. Provost. No contradiction was to be apprehended from him. [He is the same S. J. Provost with whose evidence I have dealt under the head before this one.]

Then the new deposition goes on with a story so wholly at variance with that of the first deposition, that no one could recognize the two as pertaining to the same set of facts.

I place them side by side to see how they agree:

FIRST DEPOSITION.

Ques. 7. State whether the firm of Rumery & Burnham, previous to the year 1864, packed any cooked boiled beef in hermetically sealed tin cans?

Ans. 7. They did.

Ques. 8. To what extent did they so pack this beef, and what disposition did they make of it?

Ans. 8. To quite an extent. Sold it on the Boston and New York market. Principally to Samuel Dayton, New York, and W. H. Davis & Co., Boston.

SECOND DEPOSITION.

Int. 2. You have stated, in your correction of question eight, that you sent your boiled beef to Wells, Miller & Provost. Please state as exactly as you can when and to what quantity you shipped to them the boiled beef.

Ans. 2. In winter of 1852 and spring of 1853; about 1,000 dozen cans.

Int. 3. Will you state how you happened to pack this quantity—at whose request?

Ans. 3. I packed it at the order of Wells, Miller & Provost.

It must be confessed, I think, that here is a lack of harmony between two depositions, given in the same case.

The evidence of Mr. Libby [*Comp. Rec., p. 724*] is objected to by the Respondents, probably on the ground that Burnham was not asked a question in his 2d deposition, as a foundation for Mr. Libby's evidence afterward.

But I submit that when a witness gets on the stand, by a trick, under a promise that he will testify to certain facts and then fails to do so, but uses the occasion to protect himself against a future possible contradiction, and having *done* that, and accomplished his dishonest purpose, the party or side thus led into calling him are not bound by his evidence, and are entitled to show all the circumstances.

Having got on the stand by a false representation to the party calling him, he is not entitled to the privileges of a witness, one among which is to be asked, "have you not stated so and so before this," etc.?

Burnham has destroyed himself. We were not bound by the statements thus deceitfully made by him, even although ostensibly our witness.

In truth and fact he was *not* our witness, but an adverse one, and that *under the disguise* of a friendly one.

That we expected him to testify as Mr. Libby said Burnham promised he would, is proved by this:

Int. 13. Did you put any stock into the cans with this lot of beef, which was boiled before it was put into the cans?

Ans. 13. No sir; nothing but a little salt for seasoning.

Int. 14. Will you state whether the order for this 1,000 dozen cans from Wells, Miller & Provost contained any directions as to stock for the meat, and as to how it was to be made?

Ans. 14. It contained no directions for stock for the meat. He gave us directions for making stock for the soups; he gave us directions for cooking the meat.

Complainants' Record, page 249.

To this question was expected in answer an account of the "hide gravy," but the witness had changed his mind after having, as he manifestly thought, screened himself from the danger of contradiction.

The attempt to corroborate his, Burnham's, evidence by that of his present partner, Chas. S. Morrill, was then made as follows:

Ques. 13. What disposition did the firm of Rumery & Burnham make of this cooked beef, of which you have spoken?

Ans. 13. It was sold to parties throughout the country on the market.

Ques. 14. Please give the particulars in detail, of the manner in which this cooked beef of Rumery & Burnham was put up?

Ans. 14. The meat was just taken from the bone first, then cut into pieces of one or two pounds' weight, *then either boiled or roasted*, then packed in cans. Well, we used to take a small lever and press it in.

Ques. 15. After you had pressed the meat in the can as you have stated, please state whether the can would be full of solid meat?

Ans. 15. It would.

This witness actually attempted to say that the Burnham beef was the same as that packed by these Complainants:

Ques. 26. Have you seen the cooked corn beef of Complainants, Libby, McNeill & Libby, or the Wilson Packing Company and opened any of such cans?

Ans. 26. I have.

Ques. 27. Are you then familiar with their corned beef?

Ans. 27. Not to any great extent.

Ques. 28. Did you when you opened the can of Complainants' meat, take out the meat?

Ans. 28. I did.

Ques. 29. How did the boiled beef packed by Rumery & Burnham, as you have stated, compare in solidity with the can of meat of Complainants' which you opened?

Ans. 29. The boiled beef packed by Rumery & Burnham, when kept in a cool place would compare favorably, would come out of the can in a solid mass.

Ques 30. Suppose the temperature were the same in which the Complainants' meat and the Rumery & Burnham beef were placed, in that case which would be the most solid when issued from the can, if either?

Ans. 30. The Complainants' meat would, I think.

Ques. 31. Generally speaking, did the boiled beef of Rumery & Burnham, issue solid from the can?

Ans. 31. It did.

Ques. 32. Could that beef thus out of the can be sliced?

Ans. 32. Very easily, with a sharp thin knife.

Ques. 33. State whether after being thus sliced, it was ready for eating?

Ans. 33. It was.

Ques. 34. When thus sliced, what was the appearance of this boiled beef, give as near as you can, its distinguishing characteristics?

Ans. 34. It looked like any other boiled beef. The fat was likely to be separated a little.

Ques. 35. How did it compare with ordinary fresh beef, immediately after it was boiled in the ordinary way?

Ans. 35. It was a little more tender and more difficult to slice.

Ques. 36. How did it taste and what did it taste like?

Ans. 36. It tasted like beef.

Ques. 37. Ordinary roast beef or corned beef?

Ans. 37. It tasted like ordinary boiled beef.

Now this solemn evidence was given in the face and eyes of the following—one, an affidavit given to these same Complainants, and the other a deposition given in their favor in the late suit, these Complainants v. Wm. B. Clapp, lately tried before this Court and stipulated in the evidence in this case.

CHAS. S. MORRILL AFFIDAVIT.
Complainants' Record, p. 835.

CHAS. S. MORRILL DEPOSITION.
Complainants' Record, p. 831. Ints. 2-19.

In Burnham's first deposition he gives the idea that he packed a thousand dozen cans *per annum* of the so-called boiled compressed beef.

He also gives the impression that his firm so packed from 1851 to 1854. He says from 1851 to 1867 he was with Rumery as a partner.

Then he says:—

Ques. 9. Can you state about *how many cans per annum* the firm of Rumery & Burnham then sold?

Ans. 9. Well, I couldn't say to what extent. To quite an extent, I should say, a 1,000 dozen. We didn't sell so much of that as we did of roast beef.

Respondents' Record, p.

Ques. 26. Up to what date did Rumery & Burnham so pack this boiled beef?

Ans. 26. Up to about 1853 or 1854.

Respondents' Record, p.

When put up by the Complainants he says he *only put up one lot of a thousand dozen cans* of boiled beef, and instead of its being sent to Dayton, Davis, and others, it was only packed under a *special order* from Wells, Miller & Provost.

Complainants' Record, p. 248. Ints. 2, 3.

Now we have the story of the first Burnham deposition [1,000 dozen a year from 1851 to 1854], whittled down to one thousand dozen in the winter and spring of 1852-3, under a special order.

After this, meat packed raw, and cooked in the hermetically sealing process, was forwarded to Wells, Miller & Provost, and they did not know the difference between that and the other.

Complainants' Record, p. 249. Int. 15.

In order to avoid the possibility of contradiction, we now see that Burnham limited his alleged packing of previously boiled beef in the winter and spring of 1852-3. This was packed for S. J. Provost, too, and so the witness felt safe.

He clung to his boiled beef, to his compression and his solid form of the meat, as expressed in his former deposition, *but it all went to S. J. Provost.*

Notwithstanding what he had told Mr. Libby and his counsel, when once on the stand, and having "hedged" as to W. H. Davis, Burnham swore his boiled beef through as firmly as ever, only limiting it to 1852-3.

Being thus narrowed down to a single lot of beef sent to S. J. Provost, and only in 1852-3, the story became very much more difficult to be contradicted.

But it was not true, and so the Complainants were able to show it was not true.

They proved, I submit, that no beef previously boiled, was compressed into cans in the Rumery & Burnham factory in the winter of 1852-3.

JOHN H. BARBERICK,
Complainants' Record, p. 392. Ints. 9–21.

JAMES W. BUCK.
Complainants' Record, p. 289. Ints. 2–17.

CHARLES C. CHASE.
Complainants' Record, p. 415. Ints. 2–26.

L. S. HIGGINS.
Complainants' Record, p. 345. Ints. 4–19.

WILLIAM H. HUDSON.
Complainants' Record, p. 636.

This last witness was first called by the Respondents.

His evidence was contradictory to Burnham's even then, and he had before that made a statement that no previously boiled meat was put up by Rumery & Burnham, and the same was annexed to his deposition.

The following is an extract from that statement:

William H. Hudson states as follows: I engaged in the canning business about 1852, with Rumery & Burnham; remained with them three years and part of the time was foreman of their bath room. Have been with them since for a season or so at a time. They packed meats of various kinds, and I knew their process of packing when I was with them; the most practiced process used by them was this: the raw meat was cut up into measured quantities and put into the cans and cooked therein, no previous cooking being employed; sometimes they browned fowl to give it the taste of roast, but didn't cook it thoroughly; it was then placed in the can and treated the same as the raw meat, except that we added gravy; in all cases the entire top of the can was put on after the meat was put in; no pressure was put upon the meat in filling the can; these meats would come out of the can in good condition and nice, but not in the compacted or compressed condition of the Wilson meat, which I regard as a different article altogether.

Respondents' Record, page

Subsequently he was called by the Complainants. From the two depositions it appears he was with Rumery and Burnham in 1851-2-3.

This covers the time of Burnham's alleged packing of the 1,000 dozen cans of boiled beef for S. J. Provost. The witness says none such was packed.

CORNELIUS R. MARSHALL.

Complainants' Record, p. 363. Ints. 3-10.

This witness was an employe at Rumery & Burnham's as early as 1853. The so-called boiled beef was then packed into the cans raw without pressure.

WM. H. SAWYER.

Complainants' Record, p. 233.

W. H. DAVIS.

Complainants' Record, p. 520. Ints. 12-18.

S. B. WIGGIN.

Complainants' Record, p. 377. Ints. 25-28.

Stephen J. Provost was called to sustain Burnham's account of sending this boiled beef to him. This is the same S. J. Provost before alluded to.

The only trouble was, he proved altogether *too much*, to agree with Burnham's last modified story. Probably [as that deposition was taken down in Portland], he had not heard of it.

He says he bought from 1850 to 1853, from Rumery & Burnham, roast and boiled meats "*several times.*"

Burnham says he only sent him one lot, and that in the winter of 1852-53.

Provost is careful to explain in D, answer 59, *why* he *bought* boiled beef of Rumery & Burnham, when he was, according to his account, putting up such great quantities himself.

SAMUEL DAYTON was then called upon to sustain Burnham, and he proved *altogether too much.*

He says *he* also had bought beef boiled before it was canned from Burnham from 1850 to 1854! !

He was evidently running by Burnham's *first* deposition as his chart. He also evidently did not know, that in his second deposition, Burnham had *retracted* his first story so far as it recited that he *had sold any boiled beef at all* to Samuel Dayton.

On being confronted with this, Dayton weakens visibly.

In the direct-examination, his account was this:

Ans. From 1850 to about 1854, all the meats as far as I can now remember—beef particularly—was bought of Rumery & Burnham, of Portland, Me.

Ques. 4. Did you ever open any of the cans of that meat to know its character and quality?

Ans. Frequently I opened it; on a great many occasions people would come in and inquire the price, and want to see the inside of the can, and in that way we opened it frequently.

Ques. 5. What was the character of the meat as to being solid in the cans?

Ans. Well, we would open it from the under side and turn it out sometimes on a plate or a tin dish, and in nine times out of ten it would stand right up perfectly firm; particularly that that was labeled boiled beef.

In the Cross-examination it fell down to this:

Cross-Ques. 14. You are perfectly positive, are you not, that within the period named in your direct answers, you purchased boiled beef of Rumery & Burnham, of Portland, Maine, put up in cans?

Ans. I am; that is what I first stated, from 1850 to 1854; that is what I understood it.

Cross-Ques. 15. You were not present in their factory when this beef was put up, were you?

Ans. No sir.

Cross-Ques. 16. Now if Mr. George Burnham jr., has sworn that he did not send you any boiled beef within the period named, would not that shake the confidence which you now feel in your evidence?

Ans. If he can assure me by his books that he did not, it would, for I have nothing to go back only my own recollection, as far as I can remember; my books are all destroyed, otherwise I could prove it by those.

Cross-Ques. 17. Can you swear that the beef which you did receive from Rumery & Burnham was boiled before it was put into the cans, or only cooked during the processing?

Ans. I have no way of knowing that as I was not present, but I understood from Mr. Rumery that that was the way he put up his meat.

This concludes the substance of the testimony upon the subject of the Geo. Burnham jr. packing.

I submit—

1st. Supposing it to be true as to the 1,000 dozen cans al-

leged to be sent to S. J. Provost, the meat was not packed by the Wm. J. Wilson process, because the meat was boned while raw, and was not packed while warm with the cooking.

2d. Burnham's story is under too much dispute and contradiction to be worthy of belief.

The Packing by Wm. Underwood of Boston.

The Respondents attempt to prove this by the testimony of Charles H. Mitchell.

In describing the Underwood process when, as he says, roasted beef was packed, he states as follows:—

> *Ans.* The meat is boned at the first commencement, cut up into two, four and six pound pieces, roasted before the fire, and then put into cans with the gravy that flowed from it, and then hermetically sealed.
>
> *Respondents' Record, p.*

Thus we see the meat was, according to his story, boned while raw, cooked by roasting and the "*juices that flowed from it*" were put into the cans with the beef.

The error in Mitchell's evidence was in swearing that this came out of the cans in a solid state.

If he means that this compound of grease and meat would all stick together when the fat was cold, then, in one sense he may be right, but surely not in the sense in which the Wm. J. Wilson meat is produced solid in the cans, where from being boiled and packed while hot, the different pieces *reform themselves* into a solid cake by an interlocking of the fibers in something the same way as they are naturally connected before separation.

In his cross-examination, when the real nature of the Wm. J. Wilson Patent is presented to him, in the language of the specification, he seems to fully acknowledge that he had never known such an article of canned beef as that description calls for.

Cross-Int. 155. I will read you some extracts from the patent under which the meat in those cans is put up:—

"The meat is first cooked thoroughly, bone and gristle removed, and the meat yet retain its natural grain and integrity. A measured quantity of this meat is then, while yet warm with cooking, pressed by any suitable apparatus into a previously prepared box or case with sufficient force to remove the air and all superfluous moisture, and make the meat form a solid cake. The box or case is then closed air-tight upon the meat. The meat is thus packed and compressed in its natural state—that is, without disintegration or desiccation—and it retains all the juices and nutritious qualities of the meat, the compression only removing the superfluous moisture."

Did you ever can compressed meat in that way, or produce the like article in this country?

Ans. No.

Cross-Int. 156. When you say you have never canned such an article, you mean by canning the usual process of hermetically sealing by bathing and venting, do you not?

Ans. Yes, I mean so. I have never canned that article.

Respondents' Record, page

But little attention would be paid to this evidence, were it not for the fact that he states in addition to the roasting, that the contents of the cans would come out "solid." This is disproved by numerous witnesses.

JEREMIAH R. FORD.

Complainants' Record, p. 188.

This witness is admitted by Mitchell to have worked at Underwood's at the same time he did.

Ford says the meat would not come out of the cans solidly, and was not in a solid state in the cans.

Complainants' Record, pp. 188–9. Ints. 78, 84.

J. S. Bacon,	Complainants'	Record,	p. 882	Int.	4.
J. C. Brown,	"	"	" 239	"	12.
John Chadwick,	"	"	" 514	"	6.
W. H. Davis,	"	"	" 522-3	"	27-33.
W. W. Dodge,	"	"	" 880	"	15, 16.
S. B. Hunt,	"	"	" 709	"	6, 7.
I. D. Huntoon,	"	"	" 874	"	4-7.
C. B. Jennings,	"	"	" 901	"	6-9.
W. McHowell,	"	"	" 837	"	2-14.
W. H. Stowell,	"	"	" 892	"	5-9.

All of these were purchasers of and dealers in Underwood's canned beef, and all say it was not a solid article, not a compressed cake of meat, but a compound of juice, gravy and pieces of meat, where the meat was floating in the gravy.

This evidence will also become important in the consideration of the standing of Mitchell, when the Patent on the can is considered, and it will then be referred to.

There can be no doubt, I submit, but what Mitchell's evidence is of little importance to affect either the Wm. J. Wilson or John A. Wilson Patent.

If Ford could have been disputed, the evidence of Wm. Underwood himself, of Boston, was available to the Respondents. It was taken in the Clapp case, and could have been put into this.

The Packing of Beef by M. Perl, Houston, Texas.

Mr. Perl put up 150 cans in all, experimentally, in five different ways. "Some were Appert system; the others were put up, roast beef in cans; also roast beef put up in extract of meat, and corned beef in cans. I put up a few smoked tongues in cans."

Supposing that the witness put up an equal number of cans of each kind of packing, then his packing reached the amount of *thirty cans* of each kind.

I do not think it necessary to refer to any of his different kinds or ways of putting up meat except what he calls his corned beef. Of this he gives the following account:

The corned beef was first cured as corned beef is, then boiled and cut in suitable sized pieces to fit the can; then it was rolled up and put in the can, which was then sealed up without any gravy, and then processed.

The roll of beef was pressed into the can by hand only.
M. Perl. Ints. 14, 15.

Perl says it could be shaken out in a solid piece.

Perl says it could be sliced, but Schmidt, who was called to sustain him, says it could not be cut without uncoiling.

Cross-Ques. 25. I desire to know, if you can now remember with perfect distinctness, that the contents of this can came from the can in a cake or block, without unrolling or falling apart after coming from the can, and whether your recollection justifies you in speaking with entire positiveness on that point?

Ans. It came out in a solid block from the can. In slicing it the slice partially unrolled.

Cross-Ques. 26. Then I understand you, when a slice was taken from this block, this slice would more or less uncoil or unroll. Am I right?

Ans. Yes sir.

Cross-Ques. 27. What was the density of the meat when you took it in your hand to eat? Was it or not about the same as that of boiled corned beef cooked for the table when cold?

Ans. About the same.

Cross-Ques. 28. The contents of this can, of which you speak, did not exhibit the appearance of meat compressed or hardened by mechanical pressure, did it?

Ans. I don't recollect. It tasted good, that's all I recollect.

This was an instance of taking slices of beef *first severed from the bones while the meat was raw*, forming slices or strips, then corning the strips, then cooking them, then *rolling them* up into a coil of the size of the cans, putting them into the cans by hand and hermetically sealing the cans.

There was no attempt at the formation of the solid cake of the Wm. J. Wilson Patent, as Perl himself admits.

Cross-Ques. 31. In your experiments with the cans you have described, did you have the design in your mind of forming within a can, by mechanical pressure through the stud-hole, a solid cake of meat within the can, the interior of the can forming a mold for the meat at the top, bottom and sides, with the exception of the small hole through which the pieces of meat were introduced?

Ans. No, sir: I did not have the design in my mind, but in the case of the corned beef, it formed a mass of the shape of the can. I did not use a can with a stud-hole, but an open-top can. I mean I did not introduce the meat through the stud-hole. My meat was in one solid piece, *and could not be introduced through the stud-hole.*

Beside these variations and departures from the Wm. J. Wilson process, the putting up of these thirty or so cans of the rolls of beef was confessedly nothing but an experiment, never carried beyond the thirty cans, and after that wholly abandoned.

Cross-Ques. 24. Please state how many cans in all you prepared in the ways you have stated?

Ans. About 150, more or less.

Cross-Ques. 25. Will you state particularly where this was done; I mean in what room or apartment; and whether privately by yourself alone?

Ans. It was done in my packing establishment; some, also, in my private residence. The manual labor was performed by workmen—butchers or packers.

Cross-Ques. 26. Was it not your purpose with these cans to ascertain by experiment the merits of the different methods and articles produced thereby?

Ans. It was; and it was also to find new ways to put up some articles which would be of commercial value.

Cross-Ques. 27. Then this 150 cans was an experiment instituted by you, was it not, for the two purposes named in the last answer?

Ans. It was; and it was also to use up meat at a time when the ordinary process of packing in barrels could not be used. This was really the object of the experiment. Ordinary packing in salt in barrels and tierces can only be carried on in this climate during December and January, and canning can be carried on the whole year.

Cross-Ques. 28. Then the chief object of your experiment was to provide a method or methods in which beef could be preserved in this climate the whole year round, was it not?

Ans. It was; and it was also to find a more salable article: in other words, the main object was to find some way to make money.

Cross-Ques. 29. Were, or not, the experiments satisfactory to you, so far as the quality of the articles and the keeping properties also were concerned?

Ans. They were.

Cross-Ques. 30. Did you ever engage in the sale or traffic of articles, such as you have described, as a business?

Ans. Not having had the means to put up a large stock of these articles to put on the market, I tried to obtain contracts or orders, but did not succeed; and I did not engage in the traffic, and because my partners who had the means were opposed to it; I had confidence in the articles, but they did not, and as they had the means and I had not, I had to yield to their views.

Cross-Ques. 26. Then I understand you, when a slice was taken from this block, this slice would more or less uncoil or unroll. Am I right?

Ans. Yes sir.

Cross-Ques. 27. What was the density of the meat when you took it in your hand to eat? Was it or not about the same as that of boiled corned beef cooked for the table when cold?

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Ans. Not having had the means to put up a large stock of these articles to put on the market, I tried to obtain contracts or orders, but did not succeed; and I did not engage in the traffic, and because my partners who had the means were opposed to it; I had confidence in the articles, but they did not, and as they had the means and I had not, I had to yield to their views.

Cutting out the bones from the meat while yet raw, forming the meat into strips, cooking these strips by boiling and then rolling up the cooked strips so as to enable them to drop into a can, is not the Wm. J. Wilson process.

It lacks the elements of—

1 Boiling in order to remove the bone and gristle.

2 Boiling and compacting the meat into the can while the meat is hot with the cooking.

3 Boiling so as to have the meat in the best condition for forming the artificial cake in the can.

4 Expelling the air and superfluous moisture by the pressure.

It is different from the Wm. J. Wilson process, because it was not a process for "*packing* and *preserving*" cooked meats, but was only a series of steps for preserving a roll of corned beef.

It has long been customary to cut off long, thick slices of corned beef, roll them up, tie them up with strings, then cook the roll and serve it on the table in the form of the roll, without any bone in it.

Following this practice, Perl sought to can a roll of corned beef.

It is another thing from the solidly formed cake, made by pressure, after the meat is put into the can, the can being the mold to receive the pressure, as found in the Complainants' Patent.

But the great answer to this is, that although confessedly only an experiment, it conferred no new idea to the public or the art of preserving food. Perl says in cross-answer 27, that he was experimenting to find out a way to preserve meat in hot climates in summer, as well as winter. He could not do it by barrelling and pickling. He therefore tried canning. But, while not known to him, it was public knowledge that the Appert process would preserve meat any where, for twenty years before Perl's experiment.

I have thus, as briefly as possible, called attention to the different instances of meat packing set up in these answers, and alleged to be the same as, and in anticipation of, the Wm. J. Wilson process.

Leaving out those disproved or thrown into doubt by conflicting evidence, a full examination of the case so far as it relates to this Patent and process, will show that the Wm. J. Wilson process is first, wholly distinguishable from any kind of meat packing described on this record.

All of this evidence is involved in doubt and that is an answer to it sufficient for the purposes of this case.

WILLIAM HENRY CLIFFORD.

SUPREME COURT
FILED
MAR 22 1882
JAMES H. McKENNEY, CLERK

UNITED STATES SUPREME COURT,

OCTOBER TERM, A. D. 1881,

WILSON PACKING COMPANY, ET AL., vs. THE CHICAGO PACKING AND PROVISION COMPANY, ET AL,	No. 1180. Appeal from the Circuit Court Northern Dist. of Ills.
WILSON PACKING COMPANY, ET AL., vs. ROBERT D. HUNTER, ET AL.	No. 1190. Appeal from the Circuit Court Southern Dist. of Ills.
WILSON PACKING COMPANY, ET AL., vs. ROBERT D. HUNTER, ET AL.	No. 1191. Appeal from the Circuit Court Southern Dist. of Ills.

Statement and Argument for Appellants.

By JNO. N. JEWETT,

OF COUNSEL FOR APPELLANTS.

CHICAGO:
BEACH, BARNARD & CO., LEGAL PRINTERS, 104 RANDOLPH STREET.
1882.

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STATEMENT AND ARGUMENT FOR APPELLANTS.

By JNO. N. JEWETT,

OF COUNSEL FOR APPELLANTS.

CHICAGO:

BEACH, BARNARD & CO., LEGAL PRINTERS, 104 RANDOLPH STREET.

1882.

STATEMENT OF CASE.

The bills of complaint in these causes charge the appellees with the infringement of three several re-issued Letters Patent of the United States owned by the appellants, as follows:

I.

Reissued Letters Patent (Div. A) No. 6,451, granted to William C. Marshall May 25th, 1875, upon application filed May 19th, 1875, for an "*Improvement in processes* "*for preserving meat.*"

II.

Reissued Letters Patent No. 6,370, granted to Wm. J. Wilson, dated April 6th, 1875, upon application filed April 2d, 1875, for an "*Improvement in processes for pre-* "*serving and packing cooked meat.*"

III.

Reissued Letters Patent No. 7,928, granted to John A. Wilson, dated October 23d, 1877, upon application filed October 15th, 1877, for "*Improvement in Sheet Metal* "*Cases.*"

The original William C. Marshall Patent was granted under date of July 12th, 1864. (Deft's Record, 875.)

The original William J. Wilson Patent was issued under date of March 31st, 1874, and the original John A. Wilson Patent on April 6th, 1875.

No claim was made in the court below, and none is made here, on behalf of the appellants, under the William C. Marshall Patent. The term of this patent has expired, and it is not pretended that any infringement of it is shown in the record. Its only use now is as a part of the history of the art to which it relates. It has not been doubted thus far in the progress of these cases, that the Marshall patent related to a method or process of compressing raw meat preparatory to putting it, so compressed, into a receiving vessel or case, the cooking, if any, being afterwards done in the vessel or case in which it permanently remained until required for use.

The specifications of the original William J. Wilson Patent were as follows (Appellees' Rec., 144) :

" *To all whom it may concern:*

" Be it known that I, WILLIAM J. WILSON, of Chicago, " in the county of Cook, and in the State of Illinois, have " invented certain new and useful Improvements in " Process for Preserving and Packing Cooked Meats for " transportation; and do hereby declare that the following " is a full, clear, and exact description thereof:

" The nature of my invention consists in a process for " packing cooked meats for transportation in a compressed " form, *while heated with cooking*, into an air-tight package, " so as to preserve the meat in its integrity, and retain " all the natural juices and nutritious qualities of the " meat.

"In carrying out my invention, the meat is first cooked "thoroughly at a temperature of '212° Fahrenheit, so "that all the bone and gristle can be removed, and the "meat yet retain its natural grain and integrity. The "meat is then in proper condition for eating, and is whole- "some and palatable. A measured quantity of this cooked "meat is then, while yet warm with cooking, pressed by "any suitable apparatus into a previously prepared box "or case, with sufficient force to remove the air and all "superfluous moisture, and make the meat form a solid "cake. The box or case is then closed air-tight upon "the meat.

"The meat is thus packed and compressed in its natural "state—that is, without disintegration or desiccation— "and it retains all the juices and nutritious qualities of "the meat, the compression only removing the superfluous "moisture. The meat thus put up is available at all "times, even when cooking is impracticable, as it is "already cooked before it is packed. It is more economical, "as it is compressed and reduced in weight one-half from "the uncooked weight, being free from bone and gristle, "and put up in a compact, portable shape for transporta- "tion, rendering the usual expensive cooperage unneces- "sary. Besides this, there is a great saving in the cost "of transportation. A barrel containing two hundred "pounds uncooked meat, weighs, gross, three hundred "and twenty pounds, meat, salt, brine and barrel, while "by my process it would weigh only one hundred and "ten pounds, gross, making a saving in cost of freight "alone of nearly two-thirds.

"The box or case may be made of wood or metal, or "both combined, of any suitable form or shape, and of any desired dimensions.

" Having thus fully described my invention, what I " claim as new, and desire to secure by Letters Patent, " is—

" 1. The within described process for packing cooked " meats for transportation, by compressing the same, " *while heated with cooking*, into an air-tight package, so " as to preserve the meat in its integrity, and retain all " the natural juices and nutritious qualities of the meat " substantially as set forth.

" 2. As a new article of merchandise, cooked meat " put up in solid form, in its natural state, without disin- " tegration or desiccation, in hermetically sealed packages, " as set forth.

" In testimony that I claim the foregoing, I have here- " unto set my hand."

The specifications of the reissued William J. Wilson Patent are as follows (Def'ts Rec., 146):

" *To all whom it may concern:*

" Be it known that I, William J. Wilson, of Chicago, " in the county of Cook and State of Illinois, have invented " certain new and useful improvements in Process for Pre- " serving and Packing Cooked Meats; and I do hereby de- " clare that the following is a full, clear, and exact descrip- " tion thereof:

" The nature of my invention consists in a process for " packing cooked meats for transportation, in a compressed " form, into an air-tight package, so as to preserve the " meat in its integrity, and retain all the natural juices and " nutritious qualities of the meat.

"In carrying out my invention, the meat is first cooked "thoroughly, at a temperature of 212° Fahrenheit, so that "all the bone and gristle can be removed, and the meat "yet retain its natural grain and integrity. The meat is "then in proper condition for eating, and is wholesome "and palatable. A measured quantity of this cooked "meat is then, *preferably* while yet warm with cooking, "pressed by any suitable apparatus into a previously pre- "pared box or case, with sufficient force to remove the air "and all superfluous moisture, and make the meat form a "solid cake. The box or case is then closed air-tight "upon the meat.

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"A barrel containing two hundred pounds uncooked "meat weighs, gross, three hundred and twenty pounds— "meat, salt, brine and barrel—while by my process it "would weigh only one hundred and ten pounds gross, "making a saving in cost of freight alone, of nearly two- "thirds.

"The box or case may be made of wood or metal, or

"both combined, of any suitable form or shape, and of any "desired dimensions.

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"1. The within described process for packing cooked "meats for transportation, by compressing the same into "an air-tight package, so as to preserve the meat in its "integrity, and retain all the natural juices and nutritious "qualities of the meat, substantially as set forth.

"2. As a new article of merchandise, cooked meat put "up in solid form, in its natural state, without disintegra- "tion or desiccation in hermetically seale dpackages, as set "forth.

"In testimony that I claim the foregoing, I have here- "unto set my hand, this 26th day of March, 1875.

"WILLIAM J. WILSON."

The difference between the original and the re-issue consists. 1st. In the omission of the words "*while* "*heated with cooking*," contained in the 2d clause of the original, from the same clause in the re-issue. 2d. The insertion of the word "*preferably*" in the 3d clause of the re-issue, before the words "*while yet warm with cook-* "*ing*," and 3d, omitting from the 1st claim in the re-issue, the words "*while heated with cooking*," which are contained in the 1st claim of the original. The specifications and claims are, in all other respects, identical.

Whilst these causes were pending in the court below, and before the taking of the testimony was completed, and in the month of October, 1880, the appellants filed in the Patent Office two disclaimers (Appellant's Record, 916

and 920), by the first of which they disclaim the word "*preferably*" in the re-issue, before the words "*while yet* "*warm with cooking*," and also "any process described "and claimed in said specifications or claims, in which "meat is described or claimed to be compressed into the "packages in any other condition than a *warm or heated* "*condition*," and by the second disclaimer, the manner of cooking the meat, preparatory to the packing is limited to a "*cooking by boiling in water*," so that the claims of the patent shall stand as follows: (Appellant's Rec., 922.)

First. "The within described process of packing for "transportation, meats cooked by boiling, by compress-"ing the same while heated with cooking into an air-"tight package, so as to preserve the meat in its integrity, "and retain the natural juices and nutritious qualities of "the same."

Second. "As a new article of manufacture, meat "cooked by boiling, put up while heated with cooking, so "as to form a solid cake in the package, in its natural "state without disintegration or desiccation in hermeti-"cally sealed packages, as set forth."

The specifications and claims of the *original* John A. Wilson patent, are as follows:

"*To all whom it may concern:*

"Be it known that I, John A. Wilson, of Chicago, in "the county of Cook, and in the State of Illinois have in-"vented certain new and useful Improvements in Metallic "Cans for containing Cooked Meats; and do hereby "declare that the following is a full, clear and exact de-"scription thereof, reference being had to the accompany-

"ing drawings, and to the letters of reference marked "thereon, making a part of this specification.

"My invention relates to hermetically-sealed cans used "in packing meats or other articles; and it consists in a "pyramidal-shaped can, having rounded corners and both "ends slightly flaring to form shoulders, against which "the heads or end pieces rest, as will be hereafter more "fully set forth.

"In order to enable others skilled in the art to which "my invention appertains to make and use the same, I "will now proceed to describe its construction and opera-"tion, referring to the annexed drawings, in which—

"Figure 1 is a perspective view of my can. Figure 2 "is a transverse vertical section of the same reversed.

"A represents the body of my can, made in the form "of a truncated pyramid, with rounded corners, and of "any desired number of sides, though I prefer to make "them with four sides. Both ends of the body are made "slightly flaring, as shown, so as to form interior shoulders "or offsets, *a*, against which the heads B and C are to "rest. The edges of these heads are turned outward, as "shown at *b*, and the flaring edge *d* of the end of the can "is turned inward over the flange *b*, and the three thick-"nesses of metal pressed together by machinery, with or "without solder, so as to make air-tight joints.

"In packing cooked meats, it is done by means of a "plunger through an aperture in the large head B, which "opening is afterward hermetically-sealed, by means of a "cap or plate D. In the plate D is a vent or opening, *i*, "to allow the air or gases to escape that are generated "while hermetically sealing the cans, and to prevent the

"meat from closing said vent, it is protected by means of "a trough or gutter, *h*, attached to the under side of the "plate, which trough is open at both ends. Or in place "of this trough a perforated diaphram may be used to "answer the same purpose. The can is to be opened at "the larger end, at or near the shoulder *a*, by means of "a suitable can-opener, when the can is reversed again, "and a slight tap on the small head, C, will cause the "solidly-packed meat to slide out in one piece, so as to be "readily sliced as desired.

"Having thus fully described my invention, what I "claim as new, and desire to secure by Letters Patent, "is—

"1. A can for packing food, hermetically sealed and "constructed of pyramidal form, with rounded corners and "offset ends to support the heads, said heads being secured "as shown and described.

"2. The perforated plate D, in combination with head "B or C, provided with protector *h*, substantially as and "for the purpose set forth."

The only change made by the re-issue was the addition of a third claim, which is in the following words (Appellee's Rec., 153):

"*Third.* As an improved article of manufacture, solid "meat compressed and secured within a pyramidal case "or can, so that said can forms a mold for the meat, and "permits its discharge as a solid cake, substantially as "specified."

Of the three cases to be heard together, original numbers 1,180, 1,190 and 1,191, the first was brought in the Circuit court for the Northern District of Illinois, and in-

volves all the patent above described. The other two were instituted in the Circuit court for the Southern District of Illinois, one of them, No. 1,191, upon the Marshall and William J. Wilson patent, and the other, No. 1,190, upon the John A. Wilson patent only.

By stipulation, the testimony taken in either of the cases was to be used in all, so far as applicable, and the cases were heard together before his Honor Judge DRUMMOND, who found the issues for the defendants below and entered final decrees, dismissing all the bills. From those decrees the complainants below have prosecuted the present appeals, and, by stipulation, it is agreed that all the cases shall be heard and decided upon the full record certified to this court in the first of the cases. The opinion of Judge DRUMMOND, which was not filed in the Circuit court until after the record was made up and filed in this court, has since been certified, and the certified copy is now a portion of the record in this court.

THE ARGUMENT.

I.

THE TTILE TO THE PATENTS IN CONTROVERSY.

The several assignments by and through which the title to the patents granted to William J. and John A. Wilson became vested in the Wilson Packing Company, are shown in the appellant's record, at pages 92 to 96, and at page 76 of the same record, is an admission of appellee's counsel, as follows : "And it is admitted by "the defendants' counsel that the complainants, Arthur "A. Libby, Archibald McNeill and Charles P. Libby, "have sufficient interest in the patents sued on to be prop- "erty joined as complainants in the bills of complaint in "said causes." No question arises, therefore, as to the title of the appellants or their right to sue.

II.

INFRINGEMENTS BY THE APPELLEES.

Infringements by the Chicago Packing and Provision Company, of which the other appellees in the first case are officers or managers, are shown by the depositions of the following named witnesses contained in appellant's record :

D. Hubbard Tolman 138
Margaret F. Hayes..... 140
Frederick J. Switzer..... 143
Hannah O'Mara..... 154

The infringement by the St. Louis Beef Canning Company, and the other appellees the officers and agents of said company, in the other two cases, are shown by the depositions contained in the same record, as follows:

Frank S. Waters 147
Andrew J. Corrigan 151
John C. Howard 158

It is insisted also that the exhibits in the case, which are either shown or admitted to be the appellees' products, are especially strong, if not conclusive, evidence of the fact of infringement of both the Wilson patents. It may, perhaps, be fairly stated that up to the present time very little effort has been made by any of the appellees in support of their allegation of non-infringement of the William J. Wilson patent, and the depositions and exhibits referred to are confidently relied upon as sufficient evidence against them in that respect.

III.

WILLIAM J. WILSON PATENT.

The question respecting the William J. Wilson patent, which I desire to reach directly, is this: What is the proper construction of the Patent Re-issue No. 6,370, as limited by the disclaimers? The specification of the patent commences in the usual way, and in the language following, to wit:

"Be it known that I, William J. Wilson, of Chicago, in "the county of Cook and State of Illinois, have invented "certain new and useful improvements in process of pre- "serving and packing *cooked* meats." * * *

"The nature of my invention consists in a process for "packing cooked meats for transportation in a compressed "form, into an air-tight package, so as to preserve the "meat in its integrity, and retain all the natural juices and "nutritious qualities of the meat.

"In carrying out my invention, the meat is first cooked "thoroughly at a temperature of 212° Fahrenheit, so "that all the bone and gristle can be removed and the "meat yet retain all its natural grain and integrity. The "meat is then in proper condition for eating, and is whole-"some and palatable. A measured quantity of this *cooked* "meat is then, *preferably*, while yet warm with cooking, "pressed by any suitable apparatus, into a previously pre-"pared box or can, with sufficient force to remove the air "and all superfluous moisture, and make the meat form a "solid cake. The box or can is then closed air-tight upon "the meat."

The result of this method or process of preparing and packing the meat is stated in the next succeeding paragraph, as follows:

"The meat is thus packed and compressed in its nat-"ural state—that is, without disintegration or desiccation—"and it retains all the juices and nutritious qualities of "the meat, the compression only removing the superflu-"ous moisture."

The advantages of this method or process of preserving and packing are then stated, and may be summarized as follows:

First. The meat is fully cooked and ready for use, where cooking may be impracticable.

Second. It is more economical, being compressed and

reduced one-half in weight, and free from bone and gristle, and put up in compact, portable shape for transportation, rendering the usual cooperage unnecessary.

Third. Great saving in transportation.

These advantages are in part illustrated by a comparison of the meat thus put up with the meat as ordinarily packed in barrels, and the specification concludes with the following claims:

"1. The within described process for packing cooked "meats for transportation, by compressing the same into "an air-tight package, so as to preserve the meat in its "integrity, and retain all the natural juices and nutritious "qualities of the meat, substantially as set forth.

"2. As a new article of merchandise, cooked meat "put up in solid form, in its natural state, without disinte- "gration or desiccation, in hermetically sealed packages, "as set forth." (Complainant's record, 84 to 87.)

The disclaimers referred to, apply to this patent, and are shown at pages 916 and 920 of appellants' record. By the *first* the word *preferably*, before the words "while "yet warm with cooking," is stricken out of the re-issue, and also the language, both in the body and in the claims of the specifications, is distinctly limited to *cooked meat packed and compressed into air-tight packages, whilst in a warm or heated condition.* "So that the claims of said "re-issue will refer only to a new article of manufacture— "*cooked meat put up while warm with cooking, in its nat-* "*ural state, without disintegration or desiccation, in her-* "*metically sealed packages.*" By the *second*, the manner of cooking the meat preparatory to the packing is limited to *boiling*, so that the claims shall stand as follows:

"1st. The within described process of packing for "transportation, *meats cooked by boiling*, by compressing "the same, while heated with cooking, into an air-tight "package, so as to preserve the meat in its integrity, "and retain the natural juices and nutritious qualities of "the same.

"2d. As a new article of manufacture, meat cooked "by boiling, put up while heated with cooking, so as to "form a solid cake in the package, in its natural state, "without disintegration or desiccation, in hermetically "sealed packages, as set forth."

The disclaimers have reduced the scope and claims of the Wm. J. Wilson Re-issue, No. 6,370, until it practically and substantially accords with the specifications and claims of the original patent of March 31st, 1874. A special and particular process for the preparation, preservation and packing of *cooked* meat for transportation, and the special and particular product of that process, are the claims of this patent as now presented. All other methods and processes are wholly excluded, and are as free to the public, for its use and benefit, as though this patent had never been granted. Instead of a broad claim for compressed meat in air-tight packages, there is now presented a special device, which we insist is new and useful, and its novelty and utility are amply sustained by the record in this case.

IV.

These disclaimers bear date the 13th and 14th of October, A. D. 1880, and were immediately filed in the patent office, for the copies introduced in evidence are certified by the commissioner of patents, under his seal of office, under date of October 19th, 1880. They have, of course, been made since the commencement of these proceedings, in accordance with the provisions of the act of congress in that behalf, and the decision of the court in the cases of

Rev. Stat. of U. S., Sec. 4,917.
Russell v. *Kline*, 19 Wall., 433.
Russell v. *Dodge*, 93 U. S., 460.

V.

The specifications of this patent describe a process, a *special, limited and particular process*, for the preparation and packing of meats cooked by boiling, and the claims are, 1st, for the process, and 2d, for the product.

There are only two elements necessary to be considered in determining the patentability of an alleged invention. These are *novelty* and *utility*. If these elements in fact exist in the invention, it is patentable, and the patent granted for it will be protected by the courts. This novelty and utility may be much or little. The value of the invention and therefore of the patent protecting it, may depend upon the quantum of these elements contained in it; but it, in no wise, affects the right of the patentee to be secured, for the limited period provided in the patent laws, in the exclusive enjoyment of that which he has, in fact, originated.

I shall not here attempt to discuss the question of the utility of the invention claimed in the William J. Wilson Patent. *Infringement*, itself, is competent and *sufficient* evidence of *utility*, and the appellees cannot reasonably dispute the advantages of a process or mechanism, which they have introduced into their private business. It must be presumed, as against them, that they have adopted the best appliances and processes, known in the art, to which their several occupations are related.

In addition to this, it is shown in the record beyond possibility of dispute, that the solid, compressed meat, put up in pursuance of the specification of the Wm. J. Wilson Patent, has, to say the least of it, found ready sale in all the markets of the world, and, as we insist, was unknown in these markets or any of them until introduced by the complainants, and under the patents here involved.

In proof of the novelty of the product, we refer to the depositions of the following witnesses contained in appellant's record:

Sewell B. Bailey, - - - - -	293
Temple H. Snow - - - - - -	403
James H. Pearson, - - - - -	433
W. S. Jordan, - - - - - -	443
E. T. Cowdrey, - - - - -	488
John Chadwick, - - - - - -	512
W. J. Russell, - - - - - -	637
W. H. Dudley, - - - - - -	670
W. W. Wicks, - - - - - -	693
H. K. Thurber, - - - - - -	699
Ruluf Lyles, - - - - - -	705
James P. Smith, - - - - - -	707

S. B. Hunt,	708
Walter Low,	712
E. C. Hazard,	719
J. H. Trowbridge,	758
William McHowell,	737
E. B. Beck,	869
Chas. S. Morrell,	832
Isaac D. Huntoon,	874
Geo. F. Lewis,	840
W. W. Dodge,	878
Joseph S. Bacon,	881
Frank Norton,	884
William H. Stowell,	891
J. D. P. Teller,	894
John E. Magary,	897
Charles B. Jennings,	900
Charles Mitchell (Deft's Rec.),	292

These are only a part of the witnesses who testify substantially and emphatically to the novelty of the solid compressed canned meats put up by the appellants. Amongst these witnesses are included men, practically engaged in the business of putting up canned meats from 1849 down to the present time: wholesale and retail merchants, in whose business has been included for the past 30 years extensive dealings in all kinds of canned goods, and who, from the very necessities of their trade, became and were familiar with all the different kinds and qualities of this class of goods offered upon the market; also, persons purchasing for consumption on shipboard and for transportation, who must be presumed, even if they did not so state, to have investigated the condition of the several articles of preserved meats which the market presented for their choice, and would, therefore, have

ample knowledge of what the general market afforded. All of these witnesses, and more besides, speak of the article of canned meat produced and presented to the public, by the appellants as a *new article*—new in its conditions and properties—and some of them speak very decidedly of its surpassing, for certain purposes, all productions in the line of canned meats previously known.

Now, the evidence of these witnesses, although for many years engaged in business tending directly to information of the most reliable kind respecting the state of the art to which the subject-matter of the Wm. J. Wilson Patent belongs, that they had no knowledge or information of an article of canned meat like, or similar to, that produced under the process in said patent described, until it was presented to the public by the appellants working under that patent, is, of course, negative in its character. Such negative testimony, however, in patent cases, upon the question of novelty, is very strong on behalf of the patentee.

Curtiss on Patents, Sec. 473.
Cornish v. *Keene*, Webs. Pat. Cases, 503.
Galloway v. *Bleadur*, Webs. Pat. Cases, 526.
Pennock v. *Diologue*, 4 Wash., 538.

In the case last cited the learned judge says :

" The fact of making or exhibiting an article never be-
" fore seen or heard of by the witnesses who prove the
" fact, is at least *prima facie* evidence of invention, until
" other evidence is given to prove that the same article
" was invented, known, or in use at an antecedent period
" of time, and that the patentee had only embodied the
" conceptions and the discoveries of some other persons."

In this connection, see also,

Curtis on Patents, Sec. 474,

in which the application of the same doctrine is well illustrated.

Against this testimony of this record, it will be impossible for the counsel of the appellees reasonably to contend that the article of solid compressed meat, described and claimed in the William J. Wilson Patent, as presented to the public by the appellants under and in pursuance of the provisions of that patent, was not new. There is another fact pertinent in this connection, which it is proper here to refer to. I do not forget that it is claimed that the article of solid compressed meat put up by the appellants under their patents, is older than the invention of William J. Wilson, and I shall consider the evidence offered in support of this claim hereafter; but if this claim were true, it is singular that the article itself, now so popular in the markets of the world under the ownership of the Wilson Packing Company, and Libby, McNeill & Libby, should have obtained no hold upon the trade until introduced by them. That the product is a good one; that it is useful in many ways and for many purposes; that it has great advantages over the usual form of canned meats, and has for itself now a demand which can scarcely be supplied, does not admit of question. If it was amongst the old things, why did it wait for the Wilson Packing Company, and Libby, McNeill & Libby to give it a name and a reputation so far in advance of everything else in this department of the trade and commerce of the world?

If it is a good thing, of ready sale to-day, it was a good thing and would have had a ready sale, if in exist-

ence, twenty years ago. The gastronomy of the people and their appreciation of what is good and wholesome and attractive in food, have not changed so materially, especially upon the subject of meats, within the past twenty or even thirty years, that a revolution so extraordinary in the meat market, can with any degree of propriety, be attributed to a change in the public taste. The packers of canned goods in Portland and Boston and New York and Baltimore, and elsewhere, were men of means and enterprise, according to their knowledge, and why is it, if they ever produced the article of cooked, compressed meat now supplied to the world by my clients, their efforts in that direction, *if any such were made*, were in effect limited to what may, with the utmost propriety, be designated as abandoned experiments, and that the article under their management never attained a place or standing in the trade? There can be no satisfactory answer to this inquiry, and, therefore, for the present, and in view of the testimony already referred to, it is fair to assume that the article of solid compressed meat put up by the appellants in pursuance of the patents in issue, was unknown in the trade until produced by them.

Lord Bacon says: "It would be an unsound fancy "and self-contradictory to expect that things which have "never yet been done can be done, *except by means which* "*have never yet been tried.*" On this principle, which is a true and reliable one in the process of reasoning, applying it to the case at bar, the inevitable conclusion is, that the new product is the consequence or result of a new means or process for the preservation and packing for transportation of animal food. The new article imports a new method or manipulation—a deviation from old forms and proceedings, a new element or a new combination of

old elements, either of which may be the subject of a valid patent under existing laws.

Whether the product of the Wm. J, Wilson Patent, as described in the second claim, is a patentable invention is a question to be considered hereafter. We are now dealing with the process itself.

It may not be denied that meats have been, for many years, preserved and packed in air-tight packages, and that various processes of preparation have been known and publicly used; but I now assume and I insist that it stands out too prominently on the face of this record to be mistaken, that the product manufactured and placed upon the market by the appellants under the Wilson patents was essentially new in its character and properties, so much so as to distinguish it broadly from all other preserved meats previously known. As already stated, this difference of product of itself argues a departure of some kind from the old formulas by which the old results were obtained, and that departure, in this case, I insist is a patentable invention.

The first claim of the Wm. J. Wilson patent, as limited by the disclaimers, is for a "process of packing for "transportation, meats cooked by boiling, by compress-"ing the same, while heated with cooking, into an air-"tight package so as to preserve the meat in its integrity, "and retain the natural juices and nutritious qualities of "the same." Of course we must go back to the body of the specification for the details of this process, and in them there is no indefiniteness or obscurity. The process is plainly and distinctly described. Each step of the manipulation is clearly defined. There is no mistaking the order in which they are to succeed each other. The

process is a limited one and it is an entirety. It is irreversible and indivisible. The order of the successive steps must be maintained in order that the new result may be secured. The difference between it and the old method may be much or little, according to the stand point from which it is viewed. To the man who spent years of his time and all the money he could command, in active experiments to discover this difference and test its efficiency for the purpose intended, it may and naturally would seem very decided and important. To the casual observer of the application of the process it might seem very nearly to resemble what had been known before. These are the extreme points of observation. It would undoubtedly be fair to reject both of them, and to consider the process and its differences from the old, intelligently and without prejudice.

VI.

The amount of change which will constitute a patentable invention has never yet been defined. It has always been held that any change, however small, which produced a new and useful result, was sufficient.

In *Hall* v. *Jarvis*, 1 Webs. Pat. Cases, 100, Hall's patent was for a new process of manufacturing lace by singeing off the superfluous fibres of the thread by directing upon it *a flame of gas*. The flame resulting from the combustion of other substances had been used for the same purpose before. The claim did not rest upon any particular apparatus for applying the flame, but *solely* upon the application of the flame of *gas* to the singeing of the lace. The patent was sustained, and CURTIS, in

commenting upon the case, says it is "an authority for "the position that, whether the process itself, or the means "employed in the manufacture be cheaper or dearer, sim- "pler or more complex, than the old process or means "employed, yet if it be different in respect to the agency "used, and the article produced by it is improved in "quality, the process is patentable as an improvement in "the trade or art of manufacturing lace."

Curtis on Patents, Sec. 16.

To the same effect are

Sturtz v. *De Le Rue*, 5 Russ. Chy. R., 322.
Halliwell v. *Dearman*, 1 Webs. Pat. Ca., 401, N (t).
Crane v. *Price*, 1 Webs. Pat. Ca., 375, 409.
Curtis on Patents, Secs. 17 and 18.

In the case of *Turrill* v. *Illinois Central R. R. Co.*, 3 Bissell, at page 69, his Honor, Judge DRUMMOND, says:

"There was a modification of some of the various "parts, and, in consequence of that, the other result is "obtained. It may be said that the change is not great, "and that the plaintiff's patent has somewhat narrow "ground to stand on; but not more so, we think, than "many patents that have been sustained by the courts. "A *slight change*, sometimes, of a known machine, or in "some of its parts, will effect surprising results; and to "protect a party who, by inventing such change, *has pro-* "*duced a new and useful result*, was, certainly, one of the "objects of the patent law."

That decision has since been affirmed in this court, and the theory and construction of patents and of the patent law, as thus laid down, is applicable to the case now presented.

In the light of these authorities, let us now examine the process described in the Wm. J. Wilson patent, and covered by the first claim, as limited by the disclaimers.

As I have already stated, the process is indivisible and irreversible. The precise order of sequence must be strictly followed, in order that the new and better result may be obtained. Having the specific purpose of the patent in view, one might almost as well attempt to prepare the meat for packing before killing the ox as to pack it before giving to the dead carcass the prescribed preparation. The first step in the process is the *thorough cooking by boiling*, which must be at a temperature of 212° Fahrenheit. This cooking causes a large shrinkage in the bulk of the ment, and, at the same time, renders it plastic and manageable. It also reduces it to a condition in which all the bones, which are an obstruction to the packing, and all the gristle, which is without value for food, can be readily removed without injury to the fibers of the valuable part of the meat. This cooking must be *thorough* and complete; for it is *cooked* meat ready for use, that is being prepared, and also for the further and special reason, that if any cooking is left to be done after the packing, a further shrinkage will take place in the can or package, which would loosen the contents, and relieve the previous compression, whether resulting from the method of packing, or from external pressure upon the package. The cooking should, also, be rapid. There is an object and a reason for this. The sudden immersion of the meat in boiling water causes the surface of the meat to become quickly coagulated, thereby forming an incrustation or covering, which prevents the escape of the juices of the meat, whilst the thorough cooking of the interior of the piece is being accomplished. The cooking at a lower

temperature, or in water gradually raised to the boiling point, would require a longer time, and would be at the expense of the nutritious properties. If the cooking were done in water at a lower temperature, the tendency would be to displace the natural juices, and the absorption of the water in their stead would be a natural consequence. Expedition and thoroughness of cooking are accomplished by this high temperature; still the temperature must not be so high as to burn or disintegrate the meat. It must be thoroughly cooked; but, at the same time, it must be preserved in its integrity, "without disintegration or desiccation," for such is the condition of the meat which the patent calls for, and this result, the patent says, and the statement is true in practice, is accomplished by the use of the temperature definitely fixed at the boiling point of water, or 212° Fahrenheit.

The meat, by reason of the thorough cooking, being then in the condition described—that is, "ready for eating, wholesome and palatable," the bones and gristle are next removed, so that no waste or useless material remains in it. This is the second step in the process, and may be accomplished in any convenient way, so that the meat is left in the same condition; in other words, the dissection must be without disintegration, leaving the fibers of the cooked meat in their natural state. It must not be minced or mashed, or destroyed in texture.

The third part of the process is the packing. As incident to this, there must, of course, be a can. or package of some kind, capable of being made air-tight, and of undergoing a certain amount of pressure in the compacting of the meat, and also in the final processing. Such a package, being previously prepared, a measured

quantity of the meat, already thoroughly cooked by boiling, and freed from bone and gristle, *and whilst yet heated from the cooking*, is pressed solidly into the package by any suitable means, so that the package is entirely filled with cooked compressed meat. The compression here employed, as part of the process, is an important element.

First. It compacts the plastic fibers of the meat upon each other, and to the extent of the compression excludes the air and moisture from the interior of the can.

Second. It forces the superfluous moisture to the surface, enabling it to be more readily reached by the heat, and converted into steam during the subsequent processing to which the package and contents are subjected.

Third. It fills the package tightly, and enables the packer to produce what is described in the patent as "cooked meat put up in solid form." The meat is placed and compressed in the package by itself, without sauces, gravies or jellies. It is packed just as the cooking left it, with nothing added and nothing valuable subtracted. This is necessary to the result; for it is a well known fact, that liquids are not subject to compression, and, therefore, a piece of meat, floating in or surrounded by a liquid or semi-liquid, must be incapable of compression, and under such conditions, the result aimed at in the patent could not be attained. The theory of the patent is, that meat, cooked, prepared and compressed as described, becomes a solid, compacted body of meat, entirely filling the can or package, retaining all of its natural juices and nutritious qualities, as properly cooked meat, and ready for immediate use, without any further preparation, and the practical effect of the process, properly conducted, corresponds with this theory.

The fourth step or element of the process, set forth in the Wm. J. Wilson Patent, is that which is, and for many years has been known in the trade, under the general name of "*processing*."

This is understood to signify, that after the can or package is filled, the filling aperture is closed, and the package and contents are subjected to the heat of at least the temperature of boïling water, and that at a suitable time the package is punctured or vented to allow of the escape of the confined and rarified air, when the vent is suddenly closed.

This "*processing*," as it is termed, concludes the manipulation described and claimed in the Wm. J. Wilson Patent, and the several steps or stages of the process may be summarized as follows:

1st. Thoroughly cooking the meat by boiling, until it is in proper condition for eating.

2d. Disengaging the cooked meat from the bone and gristle, without disintegration of its fibrous texture.

3d. Compressing it solidly by pressure into the can or package which is to receive and hold it, in its then condition, and whilst warm with the cooking, and without anything added to or substracted from it.

4th. Closing the package when filled, and subjecting it and its contents to the well known method of *processing*, by heating and venting at a temperature not less than the boiling point of water, for the purpose, as was formerly supposed, of expelling the air, but as is now understood, for the purpose of destroying the germs of putrefaction, which may be contained in the package.

It is respectfully submitted that the product described in the William J. Wilson Patent, viz.: "Meat cooked by "boiling, put up while heated with cooking, so as to form "a solid cake in the package in its natural state, without "disintegration or desiccation, in hermetically sealed packages," has never been put up by any other process than that above described, and that that process and that product were first known to and introduced by William J. Wilson.

VII.

That the words, "air-tight goods" and "hermetically sealed goods," as used and applied in the art of preserving food, signify goods which have been subjected to the "*processing*" above described, is proved by the witnesses, as follows:

Chas. S. Morrill, (Appellee's Rec.)			247
Geo. Burnham. Jr.,	"	"	206
Wm. Underwood,	"	"	1118
Frank Gibbie,	"	"	163
Jacob Waltemeyer,	"	"	517
Geo. F. Lewis,	"	"	227

Also, by the following depositions, which are shown in the appellants' record:

Alexander M. Ferris	68
G. A. Leland	61
Amasa Smith	301
George Burnham, Jr.	247, 226, 456
John O. Rice	279
Simon B. Wiggin	373
John H. Barberick	391

The fourth step or element of the process, set forth in the Wm. J. Wilson Patent, is that which is, and for many years has been known in the trade, under the general name of "*processing*."

This is understood to signify, that after the can or package is filled, the filling aperture is closed, and the package and contents are subjected to the heat of at least the temperature of boiling water, and that at a suitable time the package is punctured or vented to allow of the escape of the confined and rarified air, when the vent is suddenly closed.

This "*processing*," as it is termed, concludes the manipulation described and claimed in the Wm. J. Wilson Patent, and the several steps or stages of the process may be summarized as follows:

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John H. Barberick	391

Temple H. Snow.....403
Francis M. Sawyer 413
George F. Lewis.....455
John B. Daniels 535
Edwin Collins.....588
Oliver Bryan.....619
Theodore Miller 627
Hiram K. Thurber 702
Walter Low.....715
A. A. Libby.....726, 733
George M. Numsen.....812
Spencer J. Robinson.....815
Oliver Perry Price.....824–6
Edward S. Renwick.....841

"When words have acquired an exact and technical "meaning in a trade or business, and are used in a con- "tract relating to such trade or business, *prima facie*, they "are to be construed in the meaning or sense which they "have acquired in that business."

Houghton v. *Watertown Fire Insurance Co.*, (Sup. Ct. of Mass.) "The Reporter" for July 20, 1881.

VIII.

If the case stood here upon the appellant's testimony alone, the question of the patentability of the process described in the Wm. J. Wilson Patent would, of necessity, be decided in their favor. But still adhering to the subject of the process, it is proper to inquire, what, if anything, has been alleged and shown against its novelty. Its utility cannot be disputed.

Many patents and practices are set up in the answers, original and supplemental, as anticipating the invention of Wm. J. Wilson, and printed publications are referred to as containing descriptions of the process patented to and claimed by him. As is usual in patent cases, much of the "stuff" referred to in the answers, is wholly omitted in the proof, and it is only necessary to consider that which has been deemed worthy of a place in the appellees' record. The documentary evidence, professedly introduced as anticipating the process claim of the complainants' patent, was introduced so disjointedly, that much care is required to make sure that none of it has escaped appropriate notice. I have endeavored to get it all substantially together in the following references. If any are omitted, the omission is wholly unintentional. I give the patents in their chronological order, as I understand it:

1. English Patent, granted to Peter Durand, under date of August 25th, 1810.

2. English Patent, granted to Henry Gunter, under date of January 6th, 1841.

3. English Patent, granted to John Worthimer, under date of March 8th, 1841.

4. English Patent, granted to John Worthley, under date of July 6th, 1841.

5. French Patent, granted to Martin Lignac, under date of April 7th, 1855.

6. English Patent, granted to J. J. B. S. M. de Lignac, under date of October 30th, 1855.

7. United States Patent, granted to Azel Storrs Lyman, under date of June 22d, 1869.

It may be assumed, of course, that these patents, selected from the much larger number referred to in the original and supplemental answers, present the strongest case which can be made by the appellees under the defense of prior patented inventions. It is, therefore, proper to consider them carefully and critically, in order to determine with as much exactness as possible, the processes which they severally represent, and to compare these processes and their results with the process and result of the Wm. J. Wilson Patent. And in this connection; it is necessary to bear in mind the special and limited device of the Wm. J. Wilson Patent. Starting with the Durand Patent in the year 1810, which is only an embodiment of the old Appert (French) process, we shall, as I think, find that all subsequent patented devices have been built upon it in a greater or less degree, and must, therefore, be regarded with reference to it as improvements.

DURAND PATENT.

The patentee describes the invention as one "communicated to him by a certain foreigner, residing "abroad, of the method of preserving animal food, "vegetable food and other perishable articles, a long "time from perishing or becoming useless," and in setting forth the nature of the said invention, and the manner in which the same is to be performed, he says:

"*First.* I place and enclose the raw food or articles "in bottles or other vessels of glass, pottery, tin, or other "metals, or fit materials, and I do close the aperture of "such containing vessel, so as completely to cut off and "exclude all communication with the external air." Then follows a long description of the various means which

may be employed for closing the vessels. All of which is now immaterial.

"*Secondly.* When the vessels have been thus charged "and well closed, I do place them in a boiler, each sep- "arately surrounded with straw or wrapped in coarse "cloth, or otherwise defended from striking against each "other, and I fill the said boiler so as to cover the vessels "with *cold water, which I gradually heat to boiling*, and "continue the ebullition for a certain time, which must "depend upon the nature of the substance included in "the vessels and the size of the vessels, and other "obvious circumstances, which will be easily appreci- "ated by the operator, without further instructions. "Vegetable substances are to be put into the vessel in "the raw or crude state, and *animal substances partly or "half cooked, although those may also be put in raw.*"

It may be difficult to compare particular processes with particular mechanisms; but it must be evident that the manipulation thus described in the Durand patent is not and cannot be the equivalent of the Wilson process; nor can the two result in a similar product, except, as it may be said, that one piece of meat, preserved in one way, and another piece, preserved in another way, are similar, because they are both, still, pieces of meat. By the Durand method, the cooking is done either wholly or in part in the containing vessel, and it is no part of the process to compact the articles to be preserved, or to fill the vessel with the preserved substance. Another difference, clearly and plainly defined, and which is the necessary result of the difference in the two processes, is that the Durand process provides for a *complete or partial cooking* in the containing vessel, which will inevitably result in a shrinkage of the contents; and if, at

first, the vessel was completely filled with the meat to be preserved, the completed cooking would cause a shrinkage or contraction of the contents, which, at the end of the process, would leave a vacuum in the package, and a consequent looseness of the contents, which would not be and could not be *compressed*. Again, the cooking in the package would, necessarily, to some extent, extract the juices of the meat, and those uniting with the melted fat would form a sort of gravy, with which the body of the meat would be surrounded. The result, therefore, would be a piece or pieces of shrunken meat, covered, to a greater or less extent, with a greasy compound, made up of the fat and juices of the natural meat, without compression or solidity, the gravy, when solidified by cold, holding the pieces of meat together by its adhesive or sticky properties, but when melted, or at ordinary or moderate temperatures, permitting them to float about in a sort of greasy suspension. By the Wilson process these disagreeable consequences are wholly avoided. The *thorough* cooking of the meat before putting it into the containing vessel, produces all the shrinking in bulk consistent with a proper preparation of the meat for wholesome and palatable food, and the compression into the containing vessel, whilst the meat is still heated with the cooking and therefore in a plastic state, fills the vessel absolutely full with thoroughly cooked meat, the bulk of which cannot be reduced without positive injury. The result of patching a railroad rail upon the common anvil or swage block was a *mended rail*. The result when the same work was done upon the Cawood machine was precisely the same, viz: a *mended rail*. There were two methods of producing the same result, and the new mechanism was held to be patentable by the judgment of this court. Here we set

up against the old Appert or Durand process a new and a different process, producing not the same by a new result. Both the Durand and the Wilson patents relate to the general subject of preserving meat. In a broad but more remote sense, they relate to the preparation and consumption of meat as food. If I may be allowed the illustration based on this purpose of the patents, Durand says: "Shove the meat into the "stomach, either raw or only partially cooked and cook "it afterwards, and trust to Providence for the conse- "quences." Wilson says: "Cook your meat thorougly "before you eat it, and you will need no special interposi- "tion of Providence to take care of you or the meat."

You cannot have the product of the Wilson process by following the method prescribed in the Durand patent. The difference in the product, argues and illustrates the difference of the processes. I do not mean by this, that Durand's process did not or will not preserve meat, as he specifies, for "a long time from perishing or becoming "useless;" but what I do mean is, that the Durand process and products are characteristically different from those described in and covered by the Wilson patent.

THE GUNTER PATENT.

I know of no better way of describing the elements of Gunter's invention, if he made any, than by quoting the language of his own specifications. He says:

"My invention relates to a mode of treating animal and "vegetable substances *in cans or vessels by heat, and thus* "*cooking* or partially cooking *the same*, and driving off "the atmospheric air contained therein, whereby the ani- "mal or vegetable substances so treated, may be pre-

"served for a length of time in a fresh and pure state, "and retain their natural flavor. And in order to give "the best information in my power, I will proceed to de- "scribe the process as pursued by me.

"I employ (by preference,) vessels or cans of tin, and "of cylindrical or other convenient form, such vessels "having *one end fixed therein*, and into these vessels I "place such animal substances as I may desire to pre- "serve, *having first scalded them. I then solder on the "other end of the vessel*, so that the vessel will be her- "metically closed, having, in filling, *allowed a small quan- "tity of room in each vessel to permit the substances therein "to swell.* I then place a number of such vessels into a "large boiler and *cover them with water*, and close the boiler "and *cause the water therein to boil freely*, but retaining it "about two hundred and twelve degrees of Fahrenheit, "and continue such boiling for about two hours and a "half for animal matter, and from fifteen to twenty-five "minutes for vegetable matter. I then take out such "vessels and, on examination, if they show no unsound- "ness, I *place them in a hot sand bath* or other convenient "means of applying heat, *so as to have the upper end un- "covered*, and I puncture therein a minute hole, and heat "being kept up to insure it being *above* two hundred and "twelve degrees Fahrenheit, the air in the can or vessel "will be driven out with the steam and when it is seen "that the steam is coming out freely, I close the minute "hole by a soldering iron, whilst the steam is flowing off "and in opposition thereto. The process will then be "complete."

These specifications are dated January 13th, 1841, more than thirty years after the granting of the Durand Patent, embodying the Appert invention, and if they

show anything, or if they show nothing else, it is made clear through them, that no progress in the art of preserving animal food had been made during those thirty years, and that the whole subject was then but little understood. The state of the art as then existing may be readily inferred from the Gunter specifications, which after the quotation above made, proceed as follows: "I am aware that animal and vegetable matters may be "preserved by simply placing them in such vessels as are "herein described and closing them therein; but in place "of having them hermetically sealed, when undergoing "the process of heat to cook, or partially cook the same, "to have a minute hole or holes in the can and allow the "vapors to flow off during the whole time of applying "heat, and then closing such vessels, when the sub-"stances are cooked to the extent desired; but I do not "consider such process nearly so advantageous as that "above described, as much of the flavor of the animal or "vegetable substances, by the latter means, would be "driven off, whereas in the former processes the same are "retained, *as the cooking goes on during the time the vessel* "*is hermetically sealed.*"

Whether the process thus described by Gunter is identical with or different from that patented to Durand, I shall leave to be settled by those who may be curious in that respect. It is enough for me to know and the court to understand, that the Gunter process and product cannot and do not resemble the Wilson. "*Compressed cooked meat*" removable from the containing vessel *in solid form*, with its "*natural juices and nutritious qualities*," fully preserved and ready for immediate use, "*without disintegration or desiccation*," cannot be produced by the process and manipulation described in the Gunter patent. I

know there is no suggestion or intimation of such a result in the entire description, and it is evident on the very face of his own specifications, that the patentee was quite ignorant of the subject of which he was treating, or at least, that his ideas in relation to it were exceedingly crude and erroneous; for he speaks of leaving a space in the vessel to allow of the swelling of the contents in the cooking, when in fact, the thorough cooking of meat produces an actual skrinkage of about one half of the original bulk, and this shrinkage would therefore largely increase the vacant space left in the containing vessel.

The last quotation from the specifications also shows exactly what the patentee regarded as his improvement, viz: Cooking the contents, whether meat or vegetable, *in a vessel hermetically closed* in place of a vessel open or punctured. The effect of this upon the contents has already been noted.

PATENT OF JOHN WORTHIMER.

The patent in this case was granted on the 8th of March, 1841, but the specifications were not prepared and enrolled until the 8th of September, following. The document is voluminous and cumbersome, occupying four pages of the appellees' printed record. It ought to be dismissed and sufficiently disposed of, by the single suggestion, that it has no bearing upon the case at bar. The truth of this suggestion can, however, only be shown by an analysis of the patent itself.

The patentee says: "His invention consists of a mode "of more readily and certainly obtaining a vacuum, and "then closing the opening in the can by soldering, and it "is well known that on the extent to which the air is

"driven off, and subsequently excluded, depend the suc-
"cess of the process and length of time which provisions
"may be preserved, and *so far as I am informed on the*
"*subject*, up to the time of granting my Letters Patent,
"there did not exist any mode of fully driving off the at-
"mospheric air, and of soldering and positively closing the
"cans in which the provisions were placed; and in order
"to give the best information in my power, I will proceed
"to explain the invention as practiced by me.

"The cases in which the animal or vegetable sub-
"stances, whether in a solid state or in the form of soups
"and liquid, are to be placed in cases, and as nearly as
"possible to fill them; the covers are to be soldered on,
"and each of such covers having one or two small holes,
"the larger of which is to be about one-eighth of an inch
"in diameter, the other much less, even as small as a
"fiftieth of an inch." * * * * "The cans thus
"covered are, with their contents to be heated by a fire
"or a hot plate, or other convenient means, to a tempera-
"ture of somewhat more than 212° of Fahrenheit, in
"order to insure the food being at the boiling point. By
"this means the steam which is driven off from the liquid,
"which is in the provisions, will drive off the atmospheric
"air through the openings before mentioned, and in order
"to prevent the atmosphere entering, I apply a ring of
"heat or flame around the openings, which prevents the
"air passing through the openings into the cases, at the
"the same time, the steam, with the air from the inside of
"the cases, can by pressure within be driven out of the
"openings." * * * * * * * * "*When*
"*the cooking has been carried on to the desired extent*, and
"the operator is satisfied that all the atmospheric air
"which was in the provisions and the can, is fully driven

"off, * * * * he will then proceed to solder up "the holes, commencing by stopping the larger hole, and "then the smaller one, keeping up the temperature during "this process in order to insure the boiling point being "maintained within the can and that the pressure within "may be such up to the last moment, as to insure the "driving off every portion of the atmospheric air from "within the can; *for it is of the utmost consequence that "every particle of atmospheric air should* be driven off, "and I continue the heat for some minutes after the vessel "is hermetically closed. When only partially cooking, "having completed the process, as above described, I "allow the can to stand and cool until the next day, and "then light the gas burner around one of the openings, "and unsolder that opening, by which means, any air "which may have remained in the food, which it is liable "to do, when only slightly cooked. will pass off, and be "consumed. The hole is again soldered, and the process "complete."

The patentee then explains, that in place of using the burner in the act of soldering up the holes in the can, he sometimes drives off all the atmospheric air he can, closes the openings and then continues the heating process for from 10 to 30 minutes, according to the size of the package, in order to decompose the remaining air in the can. For this purpose, he says, he makes use of a solution of muriate of lime or nitrate of soda, preferring, however, the former, and by that means he is enabled to obtain a constant temperature of 270 to 280 of Fahrenheit. The claims of this patent are: 1st. The mode of employing a burner for excluding the air. 2d. The mode of preserving meat and vegetables in closed cans, by expelling as much air as possible by means of heat, then closing the

openings and continuing the heat in order to decompose the remaining air. 3d. The application of the fluid bath, as described.

What the patentee thought he had invented, and what he described and claimed, are very plain on the face of these specifications. So far as appears, there was at least novelty in the use by him of the ring of flame around the openings in the can during the soldering. Beyond this, it is difficult to see what he added to the art, as previously known. His treatment of meat and vegetables is the same. The substances are placed in the cans, so "as nearly as "possible to fill them," and the covers are then soldered on. Evidently, whatever cooking these substances receive, they receive in the cans, during the heating process, carried on expressly for the purpose of expelling and decomposing the air. No part of the process has any direct reference to either a thorough or a partial cooking of the food, and whether it is cooked or uncooked at the end of the process does not appear, and seems not to have in any way concerned the patentee. Neither is there any allusion to the solidifying of the meat in the cans, or to the filling of the can completely full of solid, compressed meat, either cooked or uncooked, and it is certain that at the end of the process, the can, by reason of the shrinkage of the contents, as a consequence of the partial cooking which the application of the heat, as described, would necessarily occasion, would not be full or nearly so, although completely filled in the beginning.

In all these particulars the Wortheimer Patent utterly fails of reaching, or even of intimating, the essential devices of the Wilson invention, and yet a scientific expert, evidently with no practical knowledge of the subject, abou

which he proposes to instruct the court, was found and persuaded to say, in substance, that the Wortheimer Patent described the Wilson process, or the essential features of it.

THE JEAN WORTHLY PATENT.

There is no difficulty in perceiving the difference between the process of preserving meat as described in this patent, and the process described in the preceding patents. The only wonder is, that anybody could have conceived the idea, that the Worthly Patent has any, even the remotest, analogy to anything that either preceded or followed it. The patentee's own description is sufficient, and is as follows:

"This invention consists of a peculiar means of pre-
"serving meat, for which purpose the meat is cut into
"convenient pieces, say, of ten or twelve pounds weight
"each, and separated from the bones. These pieces are
"to have dusted over them a mixture of sugar and salt,
"and are to be allowed to stand for about two days, when
"they are to be subjected to pressure, to force out all the
"blood and serous matter, or in place of being pressed,
"they may be moderately cooked before packing. The
"pieces of meat are then *to be packed in casks*, and in
"order to prepare the casks for such purpose, they are
"first lined with melted fat, which is allowed to set on the
"interior surfaces. Greased paper is used to cover the
"pieces of meat, and they are packed in a cask and have
"melted fat run into the spaces or interstices; and when
"the fat is set, the cask is to be closed, and is to be in-
"serted in another cask somewhat larger, so as to leave a
"vacant space between the inner and outer casks, which

"space is to be filled with sand or lime or melted fat and "then closed."

One might as well say that barreled beef anticipated the William J. Wilson patent, as this method of Worthly's. This patent is dismissed from the case. It is simply one of those things, with which a patent cause is sometimes, if not generally, lumbered up.

THE DE LIGNAC PATENTS.

These patents are both English and French. The latter, I assume, is the basis of the former, as it is prior in date, and is introduced into the record in the French language, for the purpose, doubtless, of greater obscurity.

Both of these patents are for improvements upon the processes previously existing for the preservation of animal food by *desiccation*, as opposite as possible to the process of William J. Wilson, which is for the preservation of cooked meats *without desiccation*. So much for the substance and theory of the De Lignac patents. In patent cases, however, on the question of anticipation, we must not look for differences, but for analogies or resemblances. This compels me to consider further the De-Lignac patents as set out in the record.

The substance of the process as described in the French patent is as follows:

"The bones, tendons and fatty parts of the meat be-"ing removed, I cut it into strips of the thickness of 2 or "3 centimetres, (about an inch, or an inch and a half,) "then I place it upon movable sieves in an apparatus "heated by a current of air of a temperature of from 30 "to 40 degrees Centigrade. When, by evaporation, the

"meat has lost half its weight, it is placed, sufficiently "seasoned, into cases of tin, compressed with hand press- "ure to such extent that about 1,000 grammes of meat "desiccated as above, are contained in a case of the ca- "pacity of one litre.

"This done, the case is hermetically closed, then sub- "jected to cooking in a cooking vessel for a longer or "shorter time, according to the size of the case and the "nature of the prepared meats."

The English patent, although much fuller in description, is substantially the same. The specifications say: "the "raw meat is first to be cut into cubes of about an inch "square, and subjected in stoves or hot air chambers "to a current of air heated to a temperature of 25 to 30 "degrees Centigrade, until by the continuous and ener- "getic action of this current of hot air, the meat has lost "about fifty per cent. of its weight. It is to be then "powerfully compressed in cylindrical tin boxes in such a "manner that a vessel capable of holding about a quart, "shall receive eight rations, the whole (vessel, liquor and "meat,) weighing from two pounds to two pounds and a "half, and representing five pounds weight of fresh meat. "The operation is concluded *by filling* with concentrated "liquor any spaces left in the box by the meat which has "been compressed therein. The cover is then to be "soldered on, and the box and its contents are submitted "in a cooking vessel (or digester) to a temperature suf- "ficiently high to produce steam in the box."

The claim of the patentee is, "submitting animal sub- "stances to the action of a current of warm or heated air, "whereby a certain portion of the aqueous or watery par- "ticles may be carried off, and then compressing the *par-*

" *tially dried meats* in boxes or vessels of suitable size and " shape, so that the bulk or volume of the animal matters " may be reduced, and subsequently submitting the com- " pressed meats to the action of heat, whereby steam may " be generated in the boxes, and the vesicles or pores of " the meat be thereby opened to such an extent as will " greatly facilitate the subsequent cooking of the meats as " above explained."

The first suggestion which strikes my intelligence (whatever that may amount to), in the comparison between the DeLignac and Wilson processes for the preservation of meat, is, that in the former cooked meats ready for use are not at all provided for. The substance in the cans, or receiving vessels, must undergo the cooking process when their use, as food, is desired. By the Wilson process the meat is cooked *thoroughly*, and is in a wholesome and palatable condition, before it is pressed into the cases. A second suggestion is, that the compression provided for in the DeLignac patents cannot, from the very nature and conditions of his process, compact the meat into a solid cake. It must still exist in separate strips or cubes, in spite of all the pressure brought to bear upon it. Raw meat is practically incapable of compression. Desiccation would necessarily intensify this quality. Common experience teaches this. The strips or cubes of dried meat prepared by the DeLignac process could by pressure only be forced into closer contact with each other, and the contents of the vessel would still remain an aggregation of separate strips or cubes of meat, desiccated and distinct, with no natural or artificial adhesion to each other, and ready to tumble out of the can, with a separate individuality, whenever the opportunity was presented. With the cooked meats of the William J.

Wilson patent the conditions are entirely different. The cooking has rendered the meat plastic and compressible, although largely reduced in bulk by the coagulation of the juices of the meat. In this condition, the fibres may be compressed upon and interlocked with each other, and separate pieces, introduced into the containing vessel, may be compressed upon and into each other so as to form a homogeneous whole, that whole being *thoroughly cooked meat*, in compact and solid form, "without disintegration or desiccation," and ready for use when liberated from the containing vessel. Do the DeLignac patents answer these requirements? It is impossible that they should, and the difference in result is the consequence of the treatment or manipulation of the meat; or, in other words, of the difference in the processes employed in the preparation and packing of the contents of the cans.

THE LYMAN PATENT. 1869.

A very large part of the lengthy specifications attached to this patent, is devoted to a description of various mechanical contrivances for the purpose, it is said, of "removing the animal heat, the deleterious gases and a portion of the water" from the carcass of the recently killed animal. All such parts have no relation to the present case. All that, the patentee calls the first portion of his invention. The second portion he describes in the following language (Appellees' Rec., 867):

"The second portion of my invention, as heretofore specified, relates to a new and improved mode of preparing and preserving *roast* meat in a condensed or concentrated form.

"By the ordinary mode of preserving meat in cans, it "is stewed, or boiled, or roasted, the pieces packed in cans "and the interstices filled with the gravy, or juices of the "meat, or with water, so as to displace the air from the "vacant spaces. It is then heated to about 212°, to expel "the air that is left, then soldered, and again heated to "convert any free oxygen that may be left, into carbonic "acid, which is innoxious.

"My improved *condensed roast meat* differs from the "above in its preparation, as follows:

"Having deprived the meat of a large per cent. of its "water, the juices being concentrated in it and the meat, "at the same time roasted by means of a current of dry, "warm air, which passes from the heater through the "meat chamber and off into the outer atmosphere, carry-"ing the moisture with it, *I grind or otherwise reduce the "roughest parts to about the consistency of thick mortar or "putty, and then pack the best pieces in this reduced meat, "and press it all into a compact mass in the can, the inter-"stices being filled with the reduced meat firmly pressed in, "so as to expel the air, instead of filling them with the gravy "or with water, as by the common modes. Sometimes I "grind the whole of the meat and pack the can with it, "compressing it into a solid mass, then heat and seal it up "from the air, and re-heat it to combine any free oxygen "that may possibly be left in the can.*

"In the preparation of the meat preliminary to packing "it in cans, it should be deprived of the hereinbefore men-"tioned products of the normal waste. While the pump "and condenser are valuable in thus preparing this pro-"duct, it can, however, be prepared by the usual means "of evaporating the liquid from the meat, in temperate "climates."

Further on the patentee says: "By this mode *I have* "*produced a new product, readily distinguishable from, and* "*in some respects superior to any other form of canned* "*meat.* It certainly remains sweet several times longer "after the can is opened, than when the juices of the meat, "instead of being condensed in it, are left in a fluid state "and turned in to exclude the air from the interstices. It "requires less than one-half as many cans as the ordinary "mode."

The claims of invention, relating to this second portion of the patent, correspond with the description above quoted. It is just and fair to observe what this patent, introduced by the appellees, states as to the condition of the art of preserving meat in cans, at the date of the patentee's invention; for it is directly at variance with certain oral testimony, also introduced by the appellees, to which reference will be hereafter made. He says: "By the ordinary mode of preserving meat in cans, it is "stewed, or boiled, or roasted, the pieces packed in cans, "and the interstices filled with the gravy or juices of the "meat, or with water," &c. This statement is true, so far as it goes, *but it stops short of the whole truth.* The meat, as a general rule, was either prepared and packed as thus described, or else it was placed raw or only partially cooked into the cans, and the cooking or *further* cooking, whatever that might be, carried out in the processing, that is, in the subsequent manipulation for expelling the air, or, as is now understood, for destroying the germs of decomposition.

But how is this patent applicable as an anticipation of the William J. Wilson process? Two methods are provided for, but in both, the meat is *roasted* and not boiled. By the one method a *chunk* of roasted meat is put inside

of the can, and then the vacant places in the can and all the interstices of the pieces of meat are solidly filled with a sort of thick mortar or putty, made by grinding or otherwise reducing to the condition of thick mortar or putty, a certain other portion of the meat. By the other method the can is entirely filled with the disintegrated, pulverized and putty-like meat. Neither process contemplates the result of a can entirely filled with cooked meat *in its natural condition*, put up in solid form, *without disintegration or desiccation.* Neither of the methods arrived at this result, and neither of them can accomplish it. They, or either of them, may have been an improvement upon the old methods then existing, but, as improvements, they lie in a different line from and outside of the theory of the treatment, invented and practiced by William J. Wilson, with so much success; and no man can read from the specifications of the Lyman patent, the William J. Wilson process of preserving and packing *cooked* meat for transportation and use.

PRINTED PUBLICATIONS.

A long list of printed publications is set out in the original and amended answers, which are alleged to contain descriptions of the process described in the William J. Wilson Patent; amongst which, evidently regarded by the counsel for appellees as the most important, for I think they are the only ones introduced in the testimony, are the following:

Rees' Encyclopædia,
Scientific American (1849 and 1852),
Webster's Family Encyclopædia,
Street on Preservation of Food (London Herald),

New American Encyclopædia,
Tomlinson's Cyclopædia,
Ure's Arts and Manufactures.

In addition to these is a miscellaneous lot of labels from page 862 to 866 of the appellees' record, which seem to me to have very little bearing on the case. Something of those publications, and much more besides, was read by and introduced into the evidence of Prof. Henry Morton, the expert of the appellees upon this branch of the defense. To comment on all these would be tedious and unprofitable. The quotation from Tomlinson's Encyclopedia seems to principally relied upon, setting out the well known Appert process for the preservation of animal and vegetable substances as improved by Messrs. Donkin & Co., for which process, as improved by them, it is stated, Messrs. Donkin & Co. took out a patent, but at what date the quotation does not say. I mean only to quote a few words from this description. It says (Appellees' Rec., 80): "The meat to be preserved is first *parboiled*, or "somewhat more, and freed from the bones. It is then "put, together with vegetables, if required, into tin cases "or canisters, *which are filled quite up with a rich gravy.* "A tin cover, with a small aperture in it, is then carefully "fixed on to each canister by solder, and, when the "vessel is perfectly full, it is placed in boiling water, or in "a saline bath, heated above the boiling point of water, "and kept therein until the air has been expelled as com- "pletely as possible by the steam generated within the "canister."

It is unnecessary to extend the quotation. Enough is given to show that this is not the process of the William J. Wilson Patent, and that it cannot produce the same re-

sult. The change of process is apparent, and the established doctrine, *as applicable to a process as to a mechanism*, is that a "*slight change*, sometimes, of a known machine, "or of some of its parts, will effect surprising results, and "to protect a party, who, by inventing such change, has "produced a new and useful result, was certainly one of "the objects of the patent law." I invoke the principle in behalf of my clients; for it is as good law to-day as it was in the year 1869.

Prof. Morton, the appellees' expert, it is proper to say, frankly admitted his ignorance of many things, well known and understood by all persons practically engaged in the business of preserving animal food: but in no particular is his ignorance more conspicuous than as to the effect of thorough cooking, upon the bulk of the meat, and the incompressibility of raw meat. This want of information led him into many errors and mistakes, which, whilst they are not creditable to his intelligence at a professional expert, offering himself, as such, upon the subject of preserving meat, will certainly relieve him from any suspicion of intentional misrepresentation in his effort to instruct the court. In his answer to the 3d direct interrogatory, he seems studiously to have avoided saying that he was *acquainted* with the state of the art of preserving food, and, whatever he may have read upon the subject, his whole examination is a complete demonstration of his want of practical knowledge of the art about which he is testifying.

He may be—it is not necessary to deny it—a good analytical chemist, accustomed to the manipulations of the laboratory and the lecture-room, and familiar with the science of language as there used and applied; but he is outside

of his experience and knowledge, when he is transplanted into the slaughter-house and the preserving-room, and, *therefore*, in relation to these, his evidence and opinions are of very little value. Universal science does not necessarily pertain to a professorship; much less do common experience and the processes of the common understanding. For instance, Prof. Morton could not conceive of the possibility that the words "*hermetically sealed*," as used and applied in the art of preserving food, should include the process of heating, venting and re-sealing, and yet the record on both sides is full of testimony that such is the well-understood meaning of the phrase, when thus applied. Such use he designated as the "*slang*" of uneducated men, which his scientific education would not allow him to recognize. *There is no uncertainty* as to how the court, under the evidence, should interpret these words. The language of the specifications is addressed to persons "*skilled in the art*," and not necessarily to *scientific experts*, who may have no skill in the art of any kind. Such men are too often mere theorists, with but little practical experience or observation, whose vision and comprehension are limited to the narrow field of examination and instruction pertaining to the routine of their daily life. Of all men, the *professional* professor has the least *practical* knowledge and judgment. This is a consequence of the limited circle in which he travels, and to which the speculations of a professorship naturally, if not necessarily, confine him.

The other publications, if insisted upon by appellees' counsel, I must leave to suggestions to be made in the oral argument.

THE PRIOR ART.

The prior art, as known to and used by various persons and firms in this country, is also set up in the answers, as an anticipation of the William J. Wilson Patent, in both branches of it. What I claim, as the result of the evidence upon this branch of the case, is briefly this: that the attempt of the appellees to establish a prior knowledge and use, has proved an *utter failure*. That in numbers, opportunities for information, clearness and positiveness of statement, as well as in their character for intelligence and disinterestedness, the witnesses for appellants, in rebuttal of the feeble defense of prior use, are far in excess of those offered by the appellees to make out that defense: and that, upon the whole record, the court must conclude that, in respect to the half-way and qualified statements of a prior knowledge and use, made by the appellees' witnesses, it will be charitable to them to say, that they are mistaken. The only places at which this alleged prior knowledge and use are attempted to be shown, are Portland, Boston, New York, Baltimore, Houston, and, perhaps, elsewhere in Texas, San Francisco, Cal., and in Chicago.

Th packing referred to as done in Portland was done by men by the name of Lewis, under several firm names, and by Rumery & Burnham, and Burnham & Morrill, the latter firm being the successor of Rumery & Burnham.

The Lewis' packing, as an anticipation of the process and product of the appellants, is attempted to be proved by four witnesses. It is contradicted by twenty witnesses. The Rumery & Burnham packing, and that of their successors, as such anticipation, is attempted to be shown by seven witnesses. It is contradicted by twenty-five witnesses.

The only packing in Boston sought to be shown in this branch of appellees' case, is that of Underwood & Co., and three witnesses as to that testify for appellees and twelve for the appellants.

The firm of Wells, Miller & Provost, of New York, are alleged to have anticipated the appellants' process and product, and ten witnesses are brought forward to support this allegation of the defense. Their statements are contradicted by twenty-nine witnesses on the part of the appellants. It is also made very clearly to appear that the principal witness introduced by the appellees, as to this New York packing, STEPHEN H. PROVOST, had become the active agent of the appellees in the procuring of testimony, and that his memory was treacherous and unreliable, as is usually the case with persons thus employed, especially when it may fairly be presumed, as in this case, and in the case of Burnham and Morrill, that they have, or think they have, an interest favorable to the party calling them as witnesses. (See *U. S. Stamping Co.* v. *King*, and *Same* v. *Jewett et al.*, Federal Reporter for Aug. 2, 1881, Vol. 7, pp. 860 and 869.)

The packing of meats in San Francisco, which is alleged to be an anticipation of the appellants, was done by D. R. Provost & Co., and the truth of this allegation is attempted to be shown by one witness, Joseph Farrell. His testimony in that respect is contradicted by eight witnesses, amongst whom are some of the most prominent business men of that city, who were connected, or dealt directly, with the firm of D. R. Provost & Co.

The only packing of meats in Baltimore to which appellees seem to have thought it worth while to give any attention, was that of Jacob Waltemeyer, and the only

witness, produced by them, is Mr. Waltemeyer himself. We might safely leave this upon Mr. Waltemeyer's testimony alone; but, so far as his evidence can be construed into anything favorable to the appellees, it is contradicted by two witnesses; one of whom was, during the years covered by Mr. Waltemeyer's testimony, a principal man in his establishment, and the other a dealer in his goods.

The testimony as to the Chicago packing is left to stand upon the statements of William Archdeacon and John C. Merry, introduced by the appellees. They need no contradiction.

The packing of Kemp, Day & Co., of New York, is also referred to in the answers, and in the testimony of John Irvine, appellees' witness. There is no rebuttal specially directed to this packing. There is nothing in Mr. Irvine's testimony to require it.

There is, practically, no dispute about the process or the product of the Texas packing. It was conducted mainly, if not entirely, under the instructions contained in the specifications of the Lyman Patent. The best exposition of these instructions, apart from the patent, is, perhaps, contained in the testimony of the patentee himself (Appellees' Record, 654 to 677), Mr. Azel S. Lyman. Other witnesses in this respect were examined by the appelles, as follows, as shown by the appellees' record :

Frank Gibbie.....163
Geo. O. Sanborn.....324
Geo. D. Brown.....361
Avery Plumer.....372
Richard Hill.....382
Joseph C. Bridgeman.....429
Joseph Farrell.....464

Timothy Turner.....696
William Hartung.....539
Albert Fluegle.....545
Dr. Michael Perl.....552
Erich F. Schmidt.....566
Charles Schierman.....571
Joseph A. Richardson.....578
Ephraim McLean.....619

It will hardly be contended, I think, that any of these witnesses, in their testimony, develop anything not shown in the deposition of Mr. Lyman, unless something shall be predicated upon the experimental efforts of Dr. Perl, as testified to by himself, and Dr. Erich F. Schmidt, which I do not regard of sufficient importance to be considered by way of anticipation.

The witnesses examined by appellants, specially in reference to this Texas packing, shown in appellants' record, are as follows:

Richard Hill.....458–62
Geo. H. Philbrook.....462–7
Geo. E. King.....466–70
Chas. E. Folsom, Jr.....470– 6
Chas. E. Folsom.....476–87
" " " 509
Geo. W. Colton.....653
E. S. Renwick.....959

These witnesses, with the exception of the last (appellants' expert), testify as to the condition of the meat packed in Texas, as it came under their observation. The substance of their testimony, as also that of Mr. Renwick, agrees with what might intelligently be assumed to be the result of the Lyman, or Texas packing and process of

preservation, viz: a solid mass of dessiccated and disintegrated meat, or, secondly, strips of desiccated meat, placed irregularly in a can and surrounded with meat, *both desiccated and disintegrated*, pressed in to fill up the interstices between the large pieces; or, thirdly, strips of desiccated meat, pressed into a can, or package, each strip, retaining, necessarily, its individuality, and if held together at all, only so held together by the indentations of their external surfaces and the congelation of the gelatinous substances, which might possibly surround them. Neither of these can reasonably be claimed to answer the requirements of the Wilson patent.

I have finished my written suggestions on this part of appellants' case and the case made by the appellees in opposition thereto, except as I may refer to them by way of conclusion. My aim thus far has been to direct the attention of the court to the process, described and claimed in the Wm. J. Wilson patent, as limited by the several disclaimers. Incidentally and inevitably, the second claim of this patent, which is for a new article of manufacture, viz: meat "cooked by boiling, put up while "heated with cooking, so as to form a solid cake in the "package in its natural state, without disintegration or "desiccation, in hermetically sealed packages, as set forth," has been referred to.

This product of the William J. Wilson process, as an article of manufacture, we insist, is new and patentable, the product being the exact and necessary result of the process and the direct influences of the process inhering in the product. In all such cases, the authorities sustain fully the position, that the new article, as a whole, is the

proper subject of a patent. I call the attention of the court to this claim now, for the reason that I do not wish to have it confounded with the third claim of the John A. Wilson patent, which is, in some respects, a narrower claim, in that it is limited to a package of special form and construction, having certain apparent and specified functions. Much, however, which would be applicable by way of argument and illustration, to the second claim of the William J. Wilson patent, would be applicable to the third claim of the John A. Wilson patent; and I shall, therefore, and in order to avoid repetition, consider the two together, and only now desire to suggest that they are not identical.

IX.

THE JOHN A. WILSON PATENT.

This patent, in respect to the novelty of its claims, has been made the subject of a serious contention on the part of the appellees, principally, by the introduction of evidence under special leave of the court, claimed to have been discovered after the testimony had been several times closed under stipulations and previous orders.

The production of letters patent makes a *prima facie* case in favor of the patentee. The burden of proof, then, rests upon the infringer, contesting their validity, whether the contest be in respect to novelty or utility.

Curtis on Patents, (3d ed.), Sec. 472.
Minter v. *Wells*, Webs. Patent Cases, 129.
Philia. & Trenton R. R. v. *Stimpson*, 14 Peters, 456.
Pitts v. *Hall*, 2 Blatchf., 229.

It is contended that the form of the *metallic* case or can, described in the John A. Wilson patent, was in prior use for various packages, or containing vessels, and the Kirchner patent is introduced in evidence in support of this. (Appellees' Rec., 901.) An examination of the specifications of this patent, shows that it related solely to jelly glasses, and especially to a peculiar construction of the top of the glass and of the cover for closing it. The functions of the package of that material are simply those of a containing vessel. Of course glasses were in use for putting up jellies and for many other purposes long before the date of this patent (Dec. 6, 1870), with the top or open end larger than the bottom; generally, however, if not always, of circular form in cross section. Kirchner's claims and description relate to a jelly glass, having a rectangular mouth, beaded in a special way, and to such a glass in combination with a particular kind of cap or cover. It is almost useless to suggest that the form of the Kirchner glass is not the form of the Wilson can, and that it would not answer the purpose of the Wilson *metallic* can, is too evident for discussion. A mere change of material, answering to the same uses in a particular mechanism, it is admitted, is not a subject of invention, certainly not unless the material itself is new; but if the functions of the substituted material, in combination with the changed form, are essentially different from the old, and a new and useful result is thereby produced, a very different question is presented, and one which ought not to be hastily determined upon mere differences of form, or mere differences of material alone. The improved and useful effect is, then, the result of the combination of form and material, and the two should be considered together and in respect to the purpose to be accomplished.

The John A. Wilson can was not intended for general and indiscriminate use. It was designed for a special purpose. (See specifiations of patent, Appellant's Record, 89.) It was the result of investigation as to the best form, coupled with the best material, for receiving, containing and discharging, compressed, cooked meat, and sustaining the pressure necessary to produce the required conpression of the contents. Another necessity was, that it should be practically capable of undergoing the processing necessary to the preservation of the contents. It was in view of these necessities of the can, and of the particular use to which the can was to be applied, that the material and form were finally selected, by and through which the better result has been obtained. The Kirchner patent would give no clue to this. As to form, it stated nothing unknown, and as to material and use, there was certainly nothing stated which was not old. The scope of the patent is limited to a peculiar device, appertaining to the top and cover of the vessel. The John A. Wilson patent is very different from this in several important particulars.

1st. It was not only to be a containing vessel, as the Kirchner glass was, but also a vessel capable of sustaining a certain amount of internal mechanical pressure in addition to the natural outward pressure of the contents.

2d. It was to be of such a form, that this mechanical pressure could be applied to the best advantage and with the best results in the compression of the contents.

3d. It was to be of such material, that it would sustain, without injury, the processing necessary for the preservation of the contents.

4th. It was to be of such material *and* form as, after

the processing, would best maintain its own proportions, and its contents in a condition of compression.

5th. It was to be of such form as would best allow of the discharge of the contents in its compressed or solid state.

These, in addition to the specific manner of construction, pointed out in the patent, were the objects aimed at by the patentee, and which, it cannot be denied, were accomplished by a combination of the form and material adopted and described by him. Tin cans and cans of other metals, of various forms and sizes, and applied to different uses, were, of course, older than this patent; but tin or metallic cans of the particular form described and adapted, as the patentee's are, to accomplish the best results in the particular use for which they were designed, were *first* introduced by him, under and in pursuance of the specifications of his patent.

Again, *it is not true, as a principle*, that a change of form is not patentable matter. If the change is *merely* a change of form, without the production of any new or useful result, such change, it is admitted, does not amount to invention in the view of the patent law. But, if the change of form is the *efficient element* in the production of a new and useful result, then the form is matter of substance, and is as much a matter of invention to be protected by a patent, as a new element of any other kind.

"Sometimes, form is of the very substance of an inven-
"tion, and change of form is the invention itself."

Dennis v. *Eddy*, 4 Fisher, 432–7.

"To change the form of an existing machine, and by
"reason of such change to introduce and employ other

"mechanical principles, or *natural* powers, or as it is "termed, a new mode of operation, and thus attain a new "and useful result, *is the subject of a patent.*"

Winans v. *Denmead*, 15 Howard, 341.

The same doctrine is maintained in:

Pearl v. *Ocean Mills*, 11 Off. Gaz., 2.
Catroon v. *Ring*, 1 Fisher, 397.
Parham v. *Sewing Mach. Co.*, 4 Fisher, 468.
Davis v. *Palmer*, 2 Brock., 298.
Aiken v. *Dolan*, 3 Fisher, 197.

The difficulties, in the art of preserving and packing meat, which the patentee had in mind, and to which his invention related, must be obvious. Cylindrical cans of tin, or other metal, were, as we insist, the only ones previously used in the putting up of preserved meats. The article of compressed, cooked meats was new, or comparatively so. Without stopping to inquire whether or not the record discloses the fact, it is conceded that John A. Wilson is the brother of William J. Wilson, whose patent has already been partially considered, and that he was naturally interested in the latter's experiments and success—and it may also be admitted, that John A. Wilson was induced to consider the subject of cans for the containing of compressed meats, by reason of the difficulties, which his brother encountered, growing out of the usual form of cans for containing preserved meats, then known and in common use in the trade. The well known, cylindrical can would not answer the marketable necessities of the William J. Wilson product. The solid, compressed cooked meat, "without disintegration or desiccation," could not, uniformly, be discharged from cylindrical cans

in that condition. There was no material difference in the two ends of such a can. After the processing, the external pressure of the atmosphere upon the sides was liable to, and did produce distortions of the can and an unequal indentation of its sides, which necessarily prevented the discharge of the contents in solid and attractive form, even if it could be got out whole and unbroken, when the walls of the can were of sufficient strength to resist the natural external pressure and were, therefore, maintained in their original position. To secure anything like reasonable certainty that the walls of a can, subjected to processing, would maintain themselves against this external pressure, would require the use of a heavier material, and, therefore, a more expensive one, than was required for the mere preservation of the contents of the can. It was especially with reference to these difficulties, made apparent by his brother's invention, that John A. Wilson turned his attention to the discovery of a metallic case, or can for the packing and containing of compressed, cooked meat. The result was the patent in question, and the *utility* of the invention (for whether new or old to others, it was new to him,) cannot be denied. It answered all the requirements of the case he was dealing with. It facilitated the operation of packing. By the uniform compression of its sides after the processing of the meat, it retained, in a substantial manner, the form of the meat originally given to it by the can itself and assisted in the compression by *utilizing* the external atmospheric pressure in *opposite* directions equally, without possibility of distortion or irregular indentations. Its form enabled the user to discharge the contents from the can in a solid mass of the shape of the can, as from a mould, without difficulty and without waste, and further, enabled the manufacturer

to use for this purpose a cheaper quality of material in the construction of the can, than would have otherwise been necessary.

That these qualities of the John A. Wilson can are valuable in themselves is abundantly proved. The use of the can by appellees is competent and sufficient evidence against them in this respect. If it is no better than any other, let them use the other. But this does not dispose of the question of novelty.

I shall not dwell long upon either the patents introduced by the appellees as anticipations of the John A. Wilson patent, or the argument of the appellees' counsel based thereon, in so far as they relate to the form and construction of the Wilson can. I shall venture here only a few suggestions in respect to these patents.

First. The Belgian, *Weissman*, patent (Appellee's Rec., 1017,) is an utter absurdity as a description of the John A. Wilson can. In every respect, the specifications are outside of all reasonable analogy. I make this suggestion cautiously, but deliberately in respect to the Belgian patent. Its introduction must have been an effort to catch at resemblances very remote and shadowy, whether it is considered in reference to the package itself or the condition of its contents.

Second. The Remond (French) patent, 6th addition (Appellees' Rec., 1000). This patent, or rather this addition to a patent, starts out with the statement that "my inves- "gations have been conducted *in all parts of the manufac-* "*ture of metal boxes for conserves.*" This is a modest assertion, considering the nature of the "*addition*" offered in evidence in this case. A *pyramidal* can or cans for the purposes stated in the John A. Wilson patent is not

mentioned or referred to. A *conical* can which would possess, although perhaps in a smaller degree, all the disadvantages of a cylindrical one, is simply mentioned. I cannot anticipate the argument of appellee's counsel, based upon this patent.

The Peltier (French) patents or certificates of addition are three in number. As I read the exhibits, they are all for additions to previous patents, the originals of which are nowhere shown. The first in order in appellees' record (page 1008), is the fifth addition to a French patent, granted to Emile Peltier, issued April 1st, 1859. The second in order of introduction is the *fourth* addition to the same French patent, issued August 13th, 1858. (Apellees' Rec., 1022.) The original patent, to which these are additions, is not shown.

The third is called "Original Peltier Patent of February 12th, 1858." The "*descriptive memoir*" is introduced with the following statement: "A chief part of the condi- "tions or results, for which I intend to secure the own- "ership by this patent-claim, depends upon the use of "apparatus similar or analogous to that described in "a certificate of addition, dated November 28, 1857. to "the principal patent of the previous September 30th, "taken out by Mr. Remond, for which a license to man- "ufacture has been granted to me by the *titular*."

All these patents, call them as you please, either originals or additions, are primarily and substantially for machinery, to be used in the construction of metallic cases. Mr. Brevoort, called by the defendants *to expert* these several devices, pretends to understand them and to say, that he could, from the description given, construct the mechanism, and practically use it in the making of metallic

cases. It is possible that he does understand them, and that he could construct the machinery, and that he could make, thereby, a metallic can; but the whole description, as given in the patents and as detailed by the expert, reminds me most forcibly of the Church machine and the English patent granted therefor, which were always set up in the answers and introduced in the defense to the suits of *Turrill* v. *The Railroad Companies*, of which the experts for the defendants (and there were several of them most prominent in their profession), said that it contained all the elements of the Cawood device, and that it could be practically used for the mending of railroad rails. The whole subject was disposed of by the Circuit court in the following language:

"The English patent of William Church, though in one "part it described a machine for holding railroad rails "during a certain working process therein set forth, it is "clear does not contain in substance the machine of Ca- "wood, applying it to Church's specifications. There "are jaws to hold the rail in Church's machine, and there "is what has been termed the press block, but it is mani- "fest, we think, that it would not be a practical machine "for producing the results effected by Cawood; *besides "there is no evidence before us that Church's machine has "ever been used for any practical purpose having a bear- "ing on the machine of the plaintiffs, nor indeed for any "practical purpose whatever.*"

It is not shown in this case, any more intelligentiy than it was in the Turrill case, that the contrivances of the French patent were practical, or that they had ever been used. The mere mention of a universality of form in those patents, should not be held to anticipate *a special device for a special purpose*, any more than the general

proposition of welding up the edges of rails, in the Church machine, should be held to anticipate special devices for welding patches upon abraded and exfoliated railroad bars. These French patents contain merely a suggestion of the pyramidal form. That form, *as such*, was known long before these patents were ever issued. The question was, to reduce the form to useful results, and that, in the particular here important, was accomplished by the John A. Wilson patent, and never before John A. Wilson developed it.

Now, to turn around and say, that, because in a patent for machinery to make different forms of metallic cases, a pyramidal form has been incidentally suggested, *as possible*, an invention, involving that form of metallic case, in a special and peculiar combination, is anticipated, would seem very much like saying, that anything, into which a well known form is introduced, cannot be the subject of a patent. This is not consistent with either the history or the principles of the patent law, as heretofore administered in this country or elsewhere. The Egyptian pyramids ante-date our civilization; but, so far as is known, although they may have been used for the burial places of Egyptian royalty, they were never used for containing compressed cooked meat, with a view to its preservation and transportation, *as an article of food*. The pyramids of Egypt might, quite as well, be cited as an anticipation of the John A. Wilson patent, as the French patents, or additions thereto which have been referred to in this connection. In saying this I am referring merely to the question of form.

This form of pyramidal, or wedge-shaped can, for use in the packing and preservation of compressed meats for transportation, does not, therefore, go back to the days of

Egyptian architecture, and there is no evidence in this record of any introduction of this form for such a purpose, and with the like results mechanically, prior to the John A. Wilson Patent, and the years preceding, allowed him by law, for perfecting his invention.

The conical can, which is admitted to be older than the John A. Wilson invention, will not answer all the conditions of the John A. Wilson can. The rounded sides will not permit it to collapse regularly upon the contents. If collapsed, it necessarily becomes distorted and unsightly. It must therefore be made of heavy material, capable of withstanding ordinary external pressure, and cannot assist in the regular compression of its contents.

The John A. Wilson can, in reference to the art of packing and preserving cooked meats, (and this was the relation of the invention had in view by the patentee) is a machine or tool, never before devised or used for that purpose. For the ordinary compositions of preserved meats, consisting of pieces of meat swimming in gravies or jellies, and floating loosely in the package, this can has no advantage over the straight-sided, cylindrical can in general use; but here, and with reference to the result to be accomplished, a different problem was suggested. The meat was to be compressed and solid in the can. The can, by reason of the compression, had, or was intended to have, certain functions of its own, and, in order to be serviceable, it must avoid the infirmities of the cans which were old and in common use. The idea was not, as in the Marshall Patent, to shape the compressed meat to the can which was ultimately to receive it, but to make the can itself assist in the process of compression; whilst, at the same time, it gave shape to the contents, and moulded

and preserved the form thus given. The pyramidal or wedge form, as described and shown in the drawings, is adapted to all these requirements, and the provision for filling in the contents, through an opening left for that purpose, in the larger end, facilitates the result. As pressure is applied at the larger end and through the stud-hole, the converging sides press closer together the fibres of the meat, and the permanent closing of the top, excepting the filling aperture, prevents the contents from overflowing during the process of compression. When the can is filled, and after the process of hermetically sealing, the opposite sides of the can collapse regularly under the pressure of the external atmosphere, and the result is a solid body of compressed meat, of the shape of the can, which can be uniformly discharged from the can without difficulty, and without waste. Has it been shown that such are the functions and advantages of any can in prior use? I have not read anything in the appellees' case, which can be regarded as reliable testimony, in any manner approximating these requirements; and I, therefore, claim for the John A. Wilson can, as used and applied, and intended to be used and applied by him, the merit of invention in the sense of the patent law, and that the judgment of the patent office in awarding him his patent, in this respect, should be sustained by the court. Certainly there was as much invention here, as there was in adapting the jaws of the Angle Iron Machine to the contour of the sides of a railroad rail; and the latter this court has held to amount to invention, protected by the patent law.

X.

I come now, in the natural order of these suggestions, to the consideration of the *second* claim of the William J. Wilson patent, and the *third* claim of the John A. Wilson patent. As I have already intimated, these claims are not identical. The difference, however, is limited to the form of the packages in which the *cooked, compressed* meat is or may be put up, and the functions and advantages which the special form of such packages may have.

It is not necessary that I should here further consider the functions and advantages of the John A. Wilson can. If, in itself, it is a novelty, deserving of a patent, *applied as it was intended to be, in the art of packing and preserving cooked, compressed animal* food, then the John A. Wilson patent, upon this peculiar can, will stand by itself. That some similar arrangement of parts may have previously existed, but not adapted to and made available for, the special purposes of the Wilson device, does not, under the decision of the Circuit court and of this court in the Turrill cases affect adversely the claims of this patent.

There is no opinion of any court in this country, or, so far as I am advised, in any other, which attempts to decide that a new article of manufacture, consisting of a combination of a package or containing vessel with its contents, if new and useful in its properties, and valuable in its relations to the public wants, is not patentable. The Pennsylvania Salt Company case, 3 Fisher, 423, is well known to and has been recognized as authority by the profession and courts of this country, and sustained by the general practice of the patent office.

I may adopt here, without much danger of criticism, the language of the late Justice CLIFFORD, in his dissenting opinion in the case of *Sewell* v. *Jones*, 1 Otto, 189, where he says:

"Argument to show that the commissioner may grant "a patent for a product or new manufacture, and one for "the process, is quite unnecessary, as that question is now "firmly settled, *in favor of the power*, by the unanimous "decision of this court."

His references are to the cases of

Goodyear v. *Rubber Co.*, 9 Wall., 788.
Seymour v. *Osborne*, 11 Wall., 559.
Goodyear v. *Railroad*, 2 Wall., C. C., 356.
2 Cliff., 371, and to
Curtis on Patents, 4th Ed., Sec. 267.

These references are surely sufficient to establish the rule as stated, and it is proper here further to remark, that the opinion of the majority of the court in that case does not, in any way, controvert the rule as stated by Mr. Justice CLIFFORD. The decision in the case turned upon another and very different question, as appears, especially by reference to the majority opinion, at page 185 *et seq.*, where the Winslow process and patent, as claimed by him in the patent before the court, were held to be identical with the process and product of Appert, as described in the Durand patent of 1810. No special mode of preparing or packing the food was claimed in the Winslow patent, and as I read the opinion, it is strongly intimated that if such a mode, new in itself, had been described and claimed, the patent would have been valid, and the claim for the product, as well as the process would have been sustained.

See, also,

Hobbs v. *King*, Fed. Reporter, Aug. 23, '81, Vol. 8, p. 91.

The present case is different from that, and the difference is in favor of the present patentees, and the validity of the claims now under consideration. We have, as we insist, a package, new in form and function, and specially adapted to the shaping or moulding of the contents, and preserving, and, as may be required, discharging the contents in solid form, and as compressed and moulded in it. In addition to this, we have an article of food, old in itself, it is true, but prepared and compressed in a package in a novel manner, with special view to its preservation and future use. The two are combined in the third claim of the John A. Wilson patent, as a new article of manufacture.

The second claim of the William J. Wilson Patent makes no mention of the *form* of the can or package, and is also for a new article of manufacture, viz: "*Meat* "*cooked by boiling, put up while heated with cooking, so as* "*to form a solid cake in the package in its natural state,* "*without disintegration or desiccation, in hermetically sealed* "*packages.*"

It is difficult to understand why a piece of caustic potash, in no wise distinguished from the mass of that commodity, put up in cases prepared for receiving and holding it, should be deserving of the protection of a valid patent, *as an article of manufacture*, and yet the articles described in the last claims of the Wilson patents, should be deemed unworthy of similar protection. That the latter articles were new, in many important particulars, must be conceded, and that they are useful, is equally beyond

dispute. All we ask for them is, that they be accorded the same measure of protection which the courts have awarded to other new productions of invention, having the same or similar characteristics.

XI.

Is there anything in the subject of the preservation of *animal* food, and the putting it up for transportation, which deprives improvements relating thereto, of the benefit and protection of the patent laws? Was all *useful* knowledge and all *possible* invention in the art, exhausted by Appert, in 1810, and embodied in the Durand patent?

If the court will undertake to answer these inquiries by and in accordance with the history of the art, as shown by the record, the answers to both, will *necessarily* be in the negative. Prior to the Wilson Patents, many changes from the Appert process had been made and allowed as patentable inventions. A little pamphlet, printed in London in 1857, by Eyre and Spottiswoode, printers to the queen, and purporting to be published at the "Great "Seal Patent Office," and "by order of the Commis- "sioners of Patents," contains "Abridgment of the Spec- "ifications relating to the preservation of food," as set out in 110 applications for English letters patent, commencing in the year 1791, and ending in the year 1855. Of these, nine were prior in date to the Durand patent upon the Appert process, granted August 25th, 1810. Almost every year between 1810 and 1856, as shown by this pamphlet, has its representative application for a patent upon the subject of the preservation of food, and in several of the years many such, of course, oc-

curred. A considerable number of the patents granted upon these applications, it is said, became void, in consequence of a failure *to give notice to proceed*, within the time limited in the several acts of parliament relating to patents; but the collection, as a whole, shows in a very conclusive way, that it was not understood by the people, or by the British government, that the *ultimatum* of improvement in the art of preserving food, had been reached by the Appert or Durand process. All these were patents applied for and granted by the English government prior to 1856. How many were applied for and granted in France and elsewhere on the continent of Europe, and in the United States, during the same time, and how many have been applied for and granted in England and elsewhere since, I have no means of knowing. It would be fair to suggest that their number is *legions*. It does appear, however, from the record in this case, that the Appert or Durand process, was the first to arrest the public attention in this department of the world's business. Specimens of these patents and specifications, presumably most favorable to them, are set out in the answers of the appellees, and some of them, as already stated, have been produced in evidence. Others, not legitimately introduced, are printed in appellees' record. They commence with Durand's patent in 1810, and proceed substantially as follows:

Patent of	Ludwig Granholm,	dated	Aug, 5th, 1817.
"	" Henry Gunter,	"	Jan'y 4th, 1841.
"	" Louis A. Fastier,	"	Feb'y 28th, 1841.
"	" Jean Wortheimer,	"	Sept. 8th, 1841.
"	" C. M. P. de Kermoel,	"	1854.
"	" Jean Worthly,	"	Feb'y 20th, 1855.

Patent of George Nasmyth, dated Feb'y 21st, 1854.
" " J. J. B. S. M. de Lignac, " Oct. 30th, 1855.
" " R. A. Brooman, " Nov. 8th, 1856.
" " McCall & Sloper, (Underwood), no date given.
" " A. S. Lyman, dated June 22d, 1869.

All these, excepting the Worthly and Lyman patents, must be regarded as a substantial following of the old Appert process, and the inventions described, as merely improvements thereon. Worthly and Lyman struck out in another direction, but still failed *most signally* to anticipate what Wm. J. Wilson did in 1874. It will be seen, also, by an examination of the Granholm patent (Appellees' Rec., 51), which is not properly in evidence, that the process there described, although differing very materially from the Appert process, contains no reasonable analogy to the Wilson process; and, for this reason, probably, has not been pushed to the front by way of anticipation.

Now, in view of these facts, it is proper to inquire, will this court say, that all these patented improvements, in the art of preserving animal food, were anticipated by the Appert process, and that all of these hundreds, and probably thousands of patents, actually granted by proper authorities, are absolutely void, for want of novelty? It seems to me, that by the record in this case, nothing is established as anticipating the special process and products of the Wilsons, unless it be the Appert process and product described in the Durand patent.

The literature of a subject is proper matter of argument, and may legitimately be adopted as such. The references already made, indeed, *the record itself*, show that the subject of the preservation of *animal food* has been for many years before the English public, as a matter of

national importance. As thus related, it has attracted the attention of some of England's ablest and most scientific men. Of these may be reckoned Edward Smith, M. D., L. L. D., F. R. S., who in 1873, as shown in the preface, wrote a book on the subject of "*Foods*," which was published by D. Appleton & Co., in 1874. The various prior processes and products of the world, were then before him, and his relations to the public wants, as physician, "Inspector and Assistant Medical Officer, for Poor Law purposes of the Social Government Board," &c., &c., had, undoubtedly, made him familiar with the entire art of food preservation, as it then existed. From such a source, the following extracts (pp. 32 and 33) are deemed pertinent by way of argument:

"The problem of preserving meats for lengthened "periods has, therefore, been solved, *but not in a perfectly* "*satisfactory manner*. If it be desired to use *only the* "*meat*, and to exclude the gelatinous gravy, the diminu- "tion of weight largely increases the cost of each ration, "and when eaten, *it is neither so agreeable nor so nutritious* "as meat cooked in the ordinary manner. When, how- "ever, all the contents of the tin are used together, as in "preparing Irish stew or soup, *the extracted matter* be- "comes available for, and valuable as food, and the only "*defect* is the *difference in sensible qualities* which is per- "ceived, when it is compared with fresh meat. The *de-* "*sideratum* in the preserving process is to expel the air "sufficiently, *without overcooking* the meat; but it cannot "be effected, except in the manner pointed out, *where* "*sulphurous acid gas is employed;* for the fluid must per- "manently remain in the tin, or the air would be re-ad- "mitted; *and if the quantity of fluid be large, the propor-*

"*tion of solid meat would be too small* to make the "operation profitable in a commercial point of view. *It* "*may appear easy to fill the can with solid meat, well* "*pressed down, and, then, so far exclude the air, that but* "*little fluid would be necessary to complete that part of the* "*process;* but bubbles of air would be enclosed in the "folds of the meat, and would remain, notwithstanding "the tendency of the liquid to enter every vacuity, and, "wherever they existed, the process of putrefaction could "not be prevented.

"Yet it is worthy of consideration, whether *something* "*more cannot be done in this direction, whereby the appli-* "*cation of so high a degree of temperature may be ren-* "*dered unnecessary.*"

The learned author was evidently speaking of what are known in England as "tinned goods," and specially of "tinned meats," and doubtless had in view all the different brands of "tinned meats" put up in Scotland, England, Wales and Australia, and such of the American brands as had then reached the English market. And he, in substance, describes them all just as the record describes them; and still, it is clear, from his statement, that there was a deficiency to be supplied, and which had not been supplied up to 1873. Loose and shriveled pieces of meat, floating in a liquid gravy, or simply held together, at low temperatures, by congelation of the gelatinous substances surrounding them, were the characteristic qualities of the "tinned meats" of that date, and the author so describes them. And in view of the state of the art, as then existing, he adds the following suggestions:

"Thus, if the meat was first *partially* cooked at a tem- "perature of, say 180°, and cut into blocks or slices, and

"placed carefully in layers, *until the tin was nearly filled*,
"and then boiling liquor was added to nearly fill the can,
"preparatory to exposing the tin and contents to a tem-
"perature of 200° to 212° for a limited period, I think it
"*probable* that the *desired* end might be obtained without
"overcooking the meat in its present degree."

Evidently, the learned author had struck the real defects, not only in the process of preparing and preserving meat in tins, but also in the product of the process, as then known and used; but his suggestion falls very far short of a remedy for either, such as is furnished by the Wilson patents; and, it is worthy of remark that, whilst he, in England, was engaged in speculations and suggestions, conscious of a serious difficulty, not then overcome, the Wilsons, in Chicago, were busily employed in devising a practical solution of the tangled problem, which, shortly thereafter, took permanent and successful shape in the patents granted to them.

In a little book, edited by G. Phillips Brown, T. G. S., published in London, Eng., in 1876, after the Wilson product had reached the English markets, entitled: "Brit-
"ish Manufacturing Industries," under the title of "Pre-
"servation of Food," on page 59, occurs this statement:
"In England, there is not much done in the way of meat,
"fish or vegetable preserving. The largest firm is that
"of John McCall & Co., of Houndsditch, who, in addition
"to being agents for the Melbourne Meat Preserving, and
"Western (Polac) Companies, the latter famous for its
"tinned rabbits in various forms, have acquired a high
"reputation *for tinned soups, vegetables, and a variety of*
"*other preserved articles.* The Paysander ox-tongues,
"put up by this firm in tens of thousands in Uruguay,

"have, *during the last year or two*, obtained a world-wide "name as one of the most successful of meat preserva- "tions; *while the pressed beef from Chicago*, introduced "by the same firm into the English market in the summer "of 1876, *is far superior to any similar article yet offered "to the public, and leaves little to be desired in the way of "perfect preservation.*"

I repeat that these statements, fom the current literature of the subject, are nothing more and nothing less than sensible deductions from the facts established by the record in this case. Whether the court will judicially regard itself as advised respecting this literature, or not, is immaterial. I adopt the statements, as quoted, as fair and just conclusions from the facts disclosed in the record.

A field for invention in the art of preserving and packing animal food, then, has been, and must have been, open since 1810. The want of something not supplied was felt, and was made a matter of public concern. The numerous patents applied for and granted, as disclosed by the record, leaving out all else, is sufficient evidence of this fact. And why should not the Wilson patents be sustained as valid patents for the new and useful process and product covered by them? There are few fields of business enterprise so important to the public as that of the food supply of our country and the world. And in the variety of departments, into which the field may be divided, there is none more closely related to the natural wants of the people than that which embraces the preservation and supply of *animal* food. And yet, look, for an instant, at the multitude of patents, not only applied for and granted, but, also, sustained by the courts, having relation, more or less directly, to the supply of bread to meet the public necessities. The ground is broken with a patent plow—

it is smoothed and compacted with a patent roller, planted with a patent planter, cultivated with a patent cultivator, and enclosed with a patent barbed-wire fence. The crop, when matured, is gathered with a patent harvester, thrashed in a patent thrasher, ground in a patent mill, mixed with a patent baking powder, baked in a patent oven, and eaten, in many cases, with patent teeth. Only the latter are related to the present case.

There would seem to be little left to be desired, in the mechanisms and processes by which the immediate products of the soil are raised, preserved and turned into wholesome and palatable food for transportation and use; but, as has already been shown, this has not been the case with animal products, in which are contained, in the most concentrated form, the elements of nutrition best adapted to the support and strengthening of the physical powers of the human organism, and to their preservation in a condition of healthy development. Will the court say, that improvements made in the art of preparing this species of food for preservation and transportation, are without the protection of the spirit and letter of the patent laws of this country, when, under their liberal provisions in favor of inventions, all improvements in other branches of industry, relating to the same general subject, are so amply and generously supported? I am able, I think, to appreciate the characteristic differences between a process and a mechanism; but, whilst having these differences fully in mind, I am wholly unable to understand why, under the patent laws, as they are now, improvements in processes, and, as a natural consequence, improvements in products resulting directly from those processes, are not, equally with mechanisms, the subjects of valid patents under those laws?

XII.

OPINION OF CIRCUIT COURT.

The opinion of the circuit judge has been certified and is a part of the record. In that opinion reference is made to a prior opinion of the same court, relating to the same patents, in the following language: "These patents were "before us in 1879, in the case of *The Wilson Packing* "*Co. et al.* v. *Pratt*" (should be Clapp), "11 C. L. News, "353." The case referred to is the same now pending upon appeal in this court, and for which the cases now on hearing have been substituted, and since the way to do so is thus opened by the record itself, I avail myself of the opportunity to call the attention of the court to the opinion in that case, and therefore have caused it to be printed as an *addendum* to this argument.

It is, doubtless, unneccessary to say that I have been unable to agree with either of these opinions of the Circuit court. A much more important suggestion is, that no one can consistently subscribe to both—for the two opinions do not well correspond, except in their conclusions against the complainants.

The findings of fact in the Clapp case are, as I apprehend them, correct and fully justified by the record in that as well as in the present cases; but the reasoning and conclusion of the opinion do not commend themselves to my judgment. To put the matter more strongly, the Circuit court, upon the findings in the Clapp case, which were correct, should have decided for the complainants instead of for the defendant. Such a conclusion was *legally* and *logically inevitable* from the admitted premises. In the present cases the findings of fact, if correct (which is dis-

puted by appellants), tend, at least, to support the conclusion to which the court arrived. I will allow the opinion in the Clapp case to speak for itself almost without comment.

1st. The opening statement of the opinion does not quite answer to the facts of the case. It is as follows: "*The only question* in this case necessary to be considered, "is whether the *two things*, which are the subject matter "of the patents, are, in themselves, patentable; *namely*, "whether the mode described, in which the *meat is com-* "*pressed and put into the cans*, can be patented, and "whether the mode described, *of making the cans* or ves- "sels in which the meat is placed, is patentable."

This statement, as to the *mode of compression*, is undoubtedly applicable to the Marshall patent. I cannot, however, agree that it embraces all which is covered by the patent of Wm. J. Wilson. In the latter, the *thorough cooking*, *previous to the compression*, and as limited by the disclaimers, a *thorough cooking* BY BOILING is an *essential element* of the process. This element the statement of the opinion does not include. The court will observe that the patent is for the putting up of *thoroughly cooked meat*, and, as limited by the disclaimers, *meat thoroughly cooked by boiling*, and hence the *mode of compression*, if unlimited in its operation (as is the effect of the statement of the opinion) as to the state and condition of the meat, might be held to be applicable to *all* forms and conditions of meat, which is *not true* under the re-issue itself, and is *in a greater degree untrue* under the re-issue, as limited by the disclaimers. I insist that this was the result of a misapprehension on the part of the court as to the scope and meaning of the William J. Wilson patent, and that this

misapprehension would be more broadly marked and defined if the same or similar language should be used in respect to the present cases.

2d. The next point in the opinion to which I wish to direct attention is well stated in the language of the opinion itself, as follows: "It seems *that there is an advant-* "*age* in putting up meat *in this way*, which *does not exist* "in other cases which have been brought to the attention "of the court."

This, as I understand it, is a candid admission, both of the novelty and utility—certainly *of the utility* of the process described in the William J. Wilson patent, and it must not be forgotten that it is the doctrine of the courts, in their construction of the patent law, that "a *slight change*, "*sometimes*, * * * *will effect surprising results*, and "to protect a party, who, by inventing *such change*, has "produced a new and useful result, *was certainly one of* "*the objects of the patent law*."

3d. Further on, and in connection with the subject of the can, as covered by the John A. Wilson patent, and of the product resulting from the combination of the can and the William J. Wilson process, the opinion says: "It "seems there are *some* advantages about the construction "of the can which have made it come into common use. "I have described the manner in which the meat is put "up—that it becomes a compressed, compact mass, nei- "ther dry nor liquid—that it retains most of its nutritious "qualities, and *if freed from the presure which surrounds* "*it, it will retain its compact condition, and the advantage*" (utility) "of this can is that, when it is open, as it is usu- "ally, at the bottom, and the bottom taken out [the can "having been previously cooled, so that the ice or the

"cool water may leave it in its least expansive condition* [
"and it is struck on the top, the meat falls out in a com-
"pact mass and then can be eaten, or is fit for the table.
"*Both of these are advantages, and the advantages are such*
"as have caused it, *as the testimony shows*, to come into
"great use, such as that it has made, what is claimed to
"be a *revolution* in the trade of preserved meats, and the
"*patent office* seems inclined to issue patents for *such*
"*things*, which *it calls a new article of manufacture*, both
"as to the manner in which the meat is put up, *and as to*
"*the structure of the can*, and it has issued patents for
"both of these, *as a new article of manufacture*."

I put the next paragraph, which is a continuation of the above quotation, by itself. There is, and can be, no doubt as to the direction in which the quotation, thus far, tends, and I only desire to put in contrast with it, the concluding words of the paragraph, which are as follows: "*But I must confess, on principle, I am not in-*
"*inclined to hold that these are proper subject-matters for*
"*a patent*."

I make no comment upon this, except such as naturally arises upon the paragraph of the opinion immediately following it, which is as follows: "If we sustain a patent
"of this kind, *I do not exactly see* how we can do so *with-*
"*out preventing everybody else from preparing and cook-*
"*ing meat, cutting it up*, and subjecting it to a pressure,
"*as these patentees describe*." And further on, and near the conclusion of the opinion, occurs the following: "It may
"be true, that here is as an article of merchandise, which,

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* The words in brackets are not at all applicable to the meat put up by complainants. No cooling is necessary in order that the meat be discharged from the can in a solid cake.

"in one sense, *may be said to be new* in the form in which "it exists, and which, *in consequence of its advantages*, "has come into common use.

"It may be true that this is something like the caustic "alkali case, which has been so often referred to," (and which was sustained by the same court in the case of *Tucker* v. *Fairbank et al.*) "but I must confess, *personally*, "my strong opposition to the maintenance of patents of "this kind, *as being against the rights of the public.* For "the court, now, to sustain these patents in this form, "is really giving them *a complete monopoly* of putting up "*compressed meats in this way, and in cases like these.*"

These latter quotations contain, as must be assumed, the reasons of the court for ultimately deciding, *contrary to its previous findings as to their utility and novelty*, against the validity of the Wilson patents. Why was not such reasoning equally applicable in the Vulcanite cases, the Turrill cases, the Tucker and Fairbank case, the barbed-wire fence case, and in thousands of other cases, in which the question of *monopoly* was equally involved. *I do not understand* that the fact of *monopoly is a legitimate objection* to letters patent. Valid letters patent, for an invention, *naturally and necessarily* create a monopoly, and it is the purpose of the patent law, *and this court will not question it*, to sustain valid patents *as monopolies* within the limited period provided for, as an inducement to progress and invention. I cannot agree with either the reasoning or results of this opinion.

If I should put the opinion and its results into syllogistic form, it would stand thus:

1st. The Wilsons have invented and introduced new and useful improvements in the art of preserving and

packing cooked meats for transportation and use; and have obtained letters patents therefor, which are monopolies.

2d. I, the court, am opposed, *personally*, to patents of this kind, and to monopolies; therefore,

3d. The Wilson patents are invalid.

I submit that this is unsound reasoning under the law, and that the syllogism ought to stand as follows:

1st. The Wilsons have invented and introduced new and useful improvements in the art of preserving and packing cooked meats for transportation and use; and have obtained letters patent therefor, which are monopolies.

2d. It is the policy of the patent law to favor such inventions, and to grant monopolies therefor to the inventors; and, therefore,

3d. The Wilson patents are valid as monopolies.

The syllogistic style of argument, when appropriate, approximates more nearly to mathematical demonstration, than any other form of moral reasoning. In this case, I insist that the Circuit court, by its opinion, established the *first premise* of the latter syllogism to be true. The *second is incontrovertibly the settled law.* The conclusion is a necessary consequence of the premises, and the syllogistic form of argument is, in all respects, appropriate.

One of the objections (and it is an important one) which, it is insisted, is well taken against the opinion of the circuit judge, in the cases now under review, is the segregation of the elements of the William J. Wilson process, and the slaughtering of them, so to speak, separately,

with an apparent forgetfulness of the fact that these *elements* are not claimed as inventions by themselves disjointedly, but only the combination of them producing an orderly and effective process, which is claimed, as a process, to be new and useful, producing new and useful results.

It is admitted that no one could at any time within the history of man, claim that the cooking of meat by boiling was new, or that pressing it into a containing vessel was new, or that separating cooked meat from the bone and gristle was new, or that the *processing*, as it is termed, has been new since the invention of Appert in 1810. The appellants do not claim that any one of these things is new in itself and standing alone, but they do claim and insist that the orderly arrangement of these steps, and the combination of them, as described in the William J. Wilson patent, is an invention valuable in itself and in its results, belonging to them and secured to them by the patents which they own. It would seem to be unnecessary to suggest, that a claim for a combination cannot be defeated by merely showing that the parts of the combination, considered by themselves, were old, and yet that is the course which the learned circuit judge pursued in the opinion which, so far as he was concerned, disposed of the patents of the appellant here in controversy. The rule, as I understand it, is stated in Curtis on Patents, Sec. 111, in the following language (3d Ed. p. 94):

"The machine itself may have existed before; and the "separate elements of the new combination may have "existed before, but if these elements, have not been "before united, so as to produce a method of operation "differing from what had been done before in that kind "of machines, *what is called a new combination is created.*"

This statement of the rule, well established in patent cases, is not so explicit as the adjudicated cases justify; but it is broad enough and explicit enough for present purposes. It signifies beyond doubt that a patent for a combination may be valid, even though every one of the elements of the combination may be older than the patent itself, and it is not necessary to the validity of a patent for a combination that all the parts should act simultaneously in the production of the result. It is sufficient if they act successively towards the accomplishment of a common purpose. It is true, that mechanisms are chiefly referred to as illustrative of the rule in patent causes, involving combinations; but why should not processes have the benefit of the same favorable construction? Can any reason be assigned why the man who arranges and combines old processes, and thereby produces a new, or a better result, which is useful to the public, should not have equal protection under the patent law, with the man who takes old parts in machinery and re-arranges and combines them, with like effect? Both may have the merit of novelty and utility, and in so far as they do possess these requisites of patentability, they would seem to be equally entitled to protection under the patent laws.

The learned circuit judge also, evidently misunderstood what is claimed by appellants as the recognized meaning of the words *hermetically sealed*, as used in the art of preserving food. The evidence in support of that meaning has been already referred to. As thus used, the words signify, a sealing up of the containing vessel, after it has been filled with the substance to be preserved, a reheating, venting and resealing, the whole being for the purpose of destroying the germs of putrifaction contained within the vessel. The laboratory definition, as testified to by Prof.

Morton (appellees' expert), is simply a closing of the vessel so as to prevent the ingress or egress of air. In this view, the following language of the opinion seems to be quite inexplicable. "It should be stated, that in the "original, as well as in the re-issued patent of William "J. Wilson, it seems to be implied, by the second claim, "which is made in each, that the box or can must be *her-* "*metically* sealed. Some criticism has been made upon "the use of this word. We do not understand it to mean "the same, as if it were employed in describing anything "as hermetically sealed in a laboratory, *but only that the* "*package should be so sealed as to exclude the passage of* "*air into or out of the box or can.*" By this language, the laboratory signification of the words "*hermetically sealed*," as applied and used in the art of preserving food, is repudiated, and then immediately adopted. The contention of the appellants is, that the words "*closed air-* "*tight upon the meat*," and the words "*hermetically sealed*," as used in the William J. Wilson patent, import to persons skilled in the art of preserving food, the heating, venting and re-sealing process, and that, as that process was old and well known, it became and was incorporated into and made a part of the Wilson process by these general words of reference, and that it was by no means necessary to describe it in detail.

The method already alluded to, adopted in the opinion of the Circuit court, of strangling the elements of the Wilson process *seriatim*, is fully illustrated on the fifth, sixth and seventh pages of the printed opinion, and reaches a culminating point in the following language (page 7): "There seems "to be, therefore, nothing left in the description of the "mode of preserving meat pointed out in the patent of "William J. Wilson, unless it is in putting the meat, while

"warm with cooking, into the box or case. Can that be "said to be patentable as a part of the mode of preserv- "ing meat, even if it be conceded, it had never been done "before? We think not." And thus is ended the series of arraignments by which each element of the patented combination is taken out of its proper relations, separately considered and separately condemned. I venture to suggest that such a course was never before pursued in regard to such a patent. As already shown, it is not necessary that any part or element of a combination should be new, in order that the patent for the combination should be valid. It is only necessary that the arrangement or grouping of the element should be new and productive of new and useful results. It is *the one case* in which a thing *entirely new* may be produced out of elements or parts *entirely old*, and we look through the opinion in vain for the purpose of finding a single sentence or suggestion in recognition of the proper foundation upon which the validity or invalidity of the William J. Wilson should rest. It is of the very substance of a combination patent that it should be considered as a whole. Disintegration is almost necessarily fatal to it, and we can but think that the Circuit court treated the William J. Wilson patent unfairly in this respect.

The idea of *monopoly*, in a repulsive form, seems also to have still haunted the imagination of the learned circuit judge, and a tender regard for the rights of the public, which is sometimes commendable, slowly insinuates itself into the judicial mind somewhat to the confusion of legal principles, and a fair consideration of the merits of the appellant's claims, and there is at least some corroboration of this in the concluding paragraph of the opinion (p. 8), relating to the William J. Wilson patent, which suggests

that the "true explanation of the success which has attended this and similar modes of preserving meat, *may be* in the fact that there has been a tendency in the public of late years to use all kinds of canned meats and fruits * * * and we think all William J. Wilson, and all who act under him, can claim is *that they have been particularly careful in the selecting, preparing, seasoning*, cooking and canning their meat, by which it has acquired a high reputation," &c. These suggestions of the opinion are wholly gratuitous. The record does show, it is true, that the canned meats of the appellants have gone extensively into public use, and that they have largely superseded all other kinds; but there is nothing in the record to show that they have put up meat originally of better quality than that used by other packers of canned meats, or that they have otherwise than by following the William J. Wilson process instead of the old one previously known, exceeded others in the care which they have bestowed upon their products, and it is certainly shown, beyond the possibility of a doubt, that if there is any merit in the canned meats put up by the appellants distinguishing it from that previously known, and we insist there is, it is due to the employment of the Wilson process, and to that alone.

These criticisms upon the opinion of the Circuit court relating to the William J. Wilson patent apply with full force to that part of it relating to the John A. Wilson patent; but it would seem to be unnecessary to make further application of them in detail.

JNO. N. JEWETT,

Of Counsel for Appellants.

Opinion in Clapp Case.

The only question in this case necessary to be considered is, whether the two things which are the subject matter of the patents are in themselves patentable; namely, whether the mode described in which the meat is compressed and put into the cans can be patented, and whether the mode described of making the cans or vessels in which the meat is placed is patentable.

The first patent is that of W. C. Marshall, originally issued July 12th, 1864, and reissued May 25th, 1875. It relates to the putting up and preserving of meats. Mr. Marshall's mode is, as I understand, this: He prepares the meat, being cut in proper form, and in its raw state, by what are called antiseptics; that is, the various methods of preserving meat, such as salt, saltpeter, &c., and when the meat is in this condition he subjects it to a strong pressure. It is then put, in the proper quantity, into a package, box or can, of the required size, and is there also subjected to pressure. Then, in the usual way, the package is hermetically sealed, that is to say, the air is expelled by heat, and when the air is thus expelled the package is hermetically sealed.

This seems to be the whole process as described by Mr. Marshall, and in his claim he declares that it is for packing and preserving meat, in subjecting it, after it has been exposed to preserving processes, to a heavy pressure, and packing and hermetically sealing in packages or boxes, compressed meat, as described.

The question is whether, of itself, this was a patentable subject, viz: cutting up meat in its raw state, putting it into antiseptics, subjecting it to pressure, as in a mold, before and after it is put in the box or package, and then hermetically sealing it. It is admitted that the manner in which the package is hermetically sealed was well known. That is not claimed, but only the particular way in which the meat is prepared, put up and placed in the box or package.

The main difference, as I understand, between the patent of Marshall and that of William J. Wilson, is that in the latter, which is originally issued on the 31st of March, 1874, and reissued on the 6th of April, 1875, Wilson describes his meat as being first cooked thoroughly at a temperature of 212° Fahrenheit, so that all the bone and gristle can be removed, and the meat retain its natural grain and integrity. In both patents it is claimed that the meat retains all its nutritious qualities, and that it is not desiccated, or dried, and in Wilson's patent, after it is thus cooked, it is compressed, as in Marshall's, in the box or package, and then it is hermetically sealed. These two modes of preserving meat appear to be somewhat different from any of those which have been presented to the court, in this, that the meat is not put up in brine or any other liquid, neither is it dry or desiccated, but it remains in such a form that it can be reduced to a compact mass, so as to retain most of the nutritious qualities of the meat. I take it for granted that it is impracticable to cook meat as Wilson proposes it should be cooked (although nothing is said as to the manner in which it is to be cooked), either by steam or water, or otherwise, without losing some of its nutritious qualities, but there may be a difference in the mode in which it is cooked; in some cases it may retain

most of its nutrition, and in others only a comparatively small part. It is claimed both by Wilson and by Marshall that it retains all the juices and nutritious qualities of the meat, the compression only removing the superfluous moisture. I doubt whether that is exactly true, but I presume it does retain most of the nutritious qualities of the meat.

Wilson claims "the process described for packing "*cooked* meats for transportation, by compressing the "same into an air-tight package, so as to preserve the "meat in its integrity, and retain all the natural juices and "nutritious qualities of the meat, substantially as set "forth"; and then he claims, "as a new article of mer-"chandise, cooked meat put up in a solid form in its nat-"ural state, without disintegration or desiccation, in *her-*"*metically* sealed packages, as set forth." It seems that there is an advantage in putting up meat in this way, which does not exist in other cases which have been brought to the attention of the court. The difficulty I have had, and still have, in the case, is whether this can be said to be of such a character as to entitle the parties to a patent.

The next point is as to the form of the can described in the patent of John A. Wilson, issued April 6, 1875; re-issued Oct. 23, 1877. He claims a hermetically sealed can, used in packing meat or other articles, made in the shape of a pyramid, having rounded corners and both ends slightly flaring to form shoulders against which the head or end pieces rest. In other words, this is the shape of the can which he claims (taking from the table a can of cooked corned beef put up by Libby, McNeill & Libby), and it is not material of what size it is made.

"A," he says, represents the body of the can made in the form of a truncated pyramid, with rounded corners, and of any desired number of sides, although he prefers to make it four sides; both ends of the body are made slightly flaring, so as to form interior shoulders or offsets against which the heads "C" and "B" (top and bottom) rest. The edges of these heads are turned outward, as shown, and the flaring edge of the end of the can is turned inward over the flange, and the three thicknesses of metal pressed together by machinery, with or without solder, so as to make the joints air-tight. The meat is prepared, cut up, pressed and put in cans, pressed afterwards, and then the can hermetically sealed. As I understand, the meat is put in at the large end, and then he claims the can for packing food, hermetically sealed and constructed of pyramidal form and rounded corners, with off-set ends to support the head, said head being secured as shown and described. He also claims, as an improved article of manufacture, solid meat compressed as described, and within a pyramidal can, so that said can forms a mold for the meat and permits its discharge in a solid cake, substantially as specified.

It is conceeded that there cannot be a patent for a *mere* form, unless the form is of the essence of the invention. It is not easy to describe what constitutes the essence of the form so as to make it the subject of a patent, and distinguish it from that which is mere form. Sometimes, as the courts say, the form may be the substance of the invention, and there may be such a change produced in a certain article as to make it (the article manufactured or otherwise, whatever it may be) the subject of a patent. It seems that there are some advantages about the construction of the can which have made it

come into common use. I have described the manner in which the meat is put up—that it becomes a compressed, compact mass, neither dry nor liquid; that it retains most of its nutritious qualities, and if freed from the pressure which surrounds it, it will retain its compact condition, and the advantage of this can is that when it is open, as it is usually at the bottom, and the bottom taken out (the can having been previously cooled so that the ice or the cold water may leave it in its least expansive condition), and it is struck on the top, the meat falls out in a compact mass, and then can be eaten or is fit for the table. Both of these are advantages, and the advantages have been such as have caused it, as the testimony shows, to come into great use, such that it has made what is claimed to be a revolution in the trade of preserved meats. And the patent office seems inclined to issue patents for such things, which it calls a new article of manufacture, both as to the manner in which the meat is put up, and as to the structure of the can. And it has issued patents for both of these as a new article of manufacture. But I must confess, on principle, I am not inclined to hold that these are proper subject-matters for a patent.

(If we sustain a patent of this kind, I do not exactly see how we can do so without preventing everybody else from preparing and cooking meat, cutting it up and subjecting it to a pressure, as these patentees describe. There seems nothing of invention in preparing and cutting up meat, or in putting it into a can, or in pressing it before or after it is put there, and there is nothing new, certainly, in hermetically sealing a can in the manner in which this is said to be sealed. There is nothing new in constructing a can of this particular form. It is a matter of fancy, more or less. This can might be made round or

octagonal, or in any other form, provided it was larger at the botom than at the top — lessening gradually as it approached the top—and if the meat was in the same condition in which this was, and the can open at the bottom, the meat would fall out in the same way as from the plaintiff's can. If we sustain this patent, we prevent every one else from putting up meat in this form; that is from cooking it, compressing it in the manner in which this is compressed, and putting it in cans and hermetically sealing it. I do not feel like sustaining a patent, when such consequences are to follow.)

And as to the plaintiff's can: There is nothing about this can, except the exercise, as I understand it, of mechanical skill. There is, certainly, nothing inventive in making it in this shape. I was at first inclined to think that there might be something in the peculiar form in which the can was put together, as in the rounded corners with both ends slightly flaring to form the shoulders, and the manner in which the end pieces are put on and secured, but I do not know that this is more than a mere mechanical device. In stating my views about these patents, I admit that there are some authorities which seem to sustain patents of this kind, and that seems to some extent to be the usage of the Patent office; but my own view is, that this is wrong, and that patents of this kind ought not to be sustained.

The case of the can of lard, unreported, *Tucker* v. *Fairbanks*, is somewhat similar. I have always doubted whether I ought to have sustained that claim. My desire about this case is, that it should be arranged in such a way that the opinion of the Supreme court can be taken on this question, whether or not these two things are pat-

entable, namely, the manner in which the meat is prepared, compressed and placed in the can; and secondly, the manner in which the can is constructed.

It may be true that here is an article of merchandise, which, in one sense, may be said to be new in the form in which it exists, and which, in consequence of its advantages, has come into common use.

It may be true that this is something like the caustic alkali case, which has been so often referred to, but I must confess personally my strong opposition to the maintenance of patents of this kind, as being against the rights of the public. For the court now to sustain these patents, in this form, is really giving them a complete monopoly of putting up compressed meats in this way, and in cans like these; and as the questions involved in this case are important, and as it may simplify matters, my brother judge and myself have concluded to certify the questions to the Supreme court.

OFFICE SUPREME COURT
FILED
MAR 27 1882
JAMES H. MCKENNEY, CLERK

IN THE

Supreme Court of the United States

WILSON PACKING CO., *et al.*, *Appellants.*
v.
CHICAGO PACKING AND PROVISION CO., *et al.*, *Appellees.*
} *No.* 1,180.

ALSO NOS. 252, 1,190 AND 1,191.

APPEALS FROM THE CIRCUIT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR APPELLANTS.

On the Amendment of Patents by Re-issue and Disclaimer.

WEST & BOND, OF COUNSEL.

BLAKELY, MARSH & CO., Printers, 155 & 157 Dearborn St., Chicago.

United States Supreme Court.

OCTOBER TERM, A. D. 1881.

WILSON PACKING CO., *et al.*, *Appellants.*
v.
CHICAGO PACKING AND PROVISION CO., *et al.*, *Appellees.*
No. 1,180.

AND CONSOLIDATED CASES, ETC., NOS. 252—1190—1191.

BRIEF FOR APPELLANTS

ON THE

LAW OF RE-ISSUES AND DISCLAIMERS.

Not having originally taken an active part in the preparation for the hearing of these causes, our brief is confined to the amendment of the patents, and to the law regulating the same, and as all of the patents have been corrected or reformed by re-issue, and one of them by disclaimers, we have considered the law in reference to both methods of amending original patents, preparatory to presenting our

views as to the correctness of the re-issued patents. In doing this we have deemed it advisable to collate and digest the leading or important cases in order to determine as near as possible the present status of the law relating to these subjects, as there exists a great variety of opinions in reference thereto.

PRELIMINARY OBSERVATIONS.

The 1848 Constitution of Illinois recited that a frequent recurrence to first principles was essential to the maintenance of liberty. While such recurrence need not be frequent in patent matters, yet a resort to first principles will occasionally help materially in clearing that which appears to be in confusion.

The several States granted patents up to A. D. 1790, but the Fathers were of the opinion that patent matters were of sufficient interest and importance to the country to be taken away from the States and to be placed under the control and protection of the National Government.

Under the original idea that inventions were a national benefit the early decisions are liberal, but they grow less and less so, and some of our decisions seem to come within, and to justify the complaint of the *London Journal of Science*, under the title of "The Martyrdom of Science."

"In Britain the anti-scientific spirit still lingers more "decidedly than elsewhere. * * * The manner in which "inventors have often been treated in different parts of Eng- "land seems to show that such feelings are widely spread. "The country which first wins over her working classes to "favor invention and to become themselves inventors will "command the industrial supremacy of the world. America "is fast attaining this object by her patent system, which "enables even a poor man to secure his property in an in-

"vention. Our statesmen, Whig and Tory alike, can scarce-
"ly be restrained from laying additional difficulties in the
"way of patent right."

Popular Science Monthly for May, 1880, p. 75.

The difficulties surrounding a patentee are well set forth by Carpmael in the preface to his "Collection of Patent Cases," from which the following is taken:

"To draw a specification correctly requires a thorough "knowledge of the various decisions in causes involving "patent rights, also an intimate acquaintance with the prac-"tical working of the invention to be described; and fur-"ther, in order that the extent of the invention may be "well defined, correct and extensive information should be "possessed by the person engaged as to what has been "previously patented and used in the manufacture to which "the invention relates. There are no rules for drawing a "specification. * * * Law, science, and much practical "knowledge of manufactures are necessary to be possessed "by the same individual, or brought together in different "persons, in order to draw a specification, or to give a "correct opinion of the construction which a court of law "will put on a particular specification."

RE-ISSUES.

There are many equitable reasons for permitting an inventor to reform his patent and restate his invention. A true inventor is always on the border land; he is dealing with the unknown as attached to, or connected with the known; that he should know all of the "knowable" cannot be expected; if he knows well what has come within his own observation he is an intelligent man, and it may well be that he is not able to describe the boundaries with accuracy, or well know the extent or value of what he has truly found out; and in employing others supposed to be skilled to assist him, he is liable to fall into the hands of

those whose business it is to *get patents* without any reference *to securing* all that has been invented; for these reasons and for others, the right of an inventor to re-issue, or restate his invention, and the boundaries thereof, was found to be essential and to inhere in a patentee as a natural right, *independent of any statute*.

There is no question about the fact of there being much confusion in the law of re-issues, and one of the principal causes of this confusion has arisen from a wrong application of the maxim "that all patents and rights under them are statutory;" while this maxim is in the main correct it has no reference to re-issues of patents once obtained.

Re-issue rights are inherent, and *are not statutory*. An inventor having a patent has a natural, or common law, right to have it truly cover his actual invention, or in other words, having a patent deed for an invention he has a right, independent of any statute, to have his deed reformed so as to accord with the truth, and to secure his invention fully, with the single limitation that the defect must not have been caused by an "intent to deceive;" and this exception is on the principle that no man shall be permitted to take advantage of his own wrong or fraud, rather than on any principle inhering in patent law.

In view of the action of Congress in the premises, it may not in one sense be important to determine whether or not re-issue rights inhere in a patent once granted, for the statute controls whether it is a grant or a limitation. In another sense it is important, for if it is an inherent right as determined by the court in *Grant v. Raymond* and *Shaw v. Cooper*, then the statute so far as it relates to re-issues is to be construed strictly against the public and *not against the patentee*. All original rights not specifically cut off by Congress remain.

Much confusion in relation to the law of re-issues has arisen in the minds of the people and at the bar, for want of attention to first principles.

Another cause for the confusion has arisen from the attempts to absorb the later improvement of others by means of patents for practically worthless or inoperative devices, or those of an actually limited scope, by so generalizing and expanding them as to levy tribute upon that which they neither created nor improved. This class of re-issues has tended to prejudice the courts and the public against re-issued patents, and has consequently provoked the declaration of some bad law.

Another source of confusion has arisen from the conflicts between the advocates for, and the opponents of, the entire system of patents, which conflict has developed, in the courts administering the law, a wide range of decisions, and even in the same court. This conflict, in so far as re-issues are concerned, is now largely centered on the question as to whether the words "same invention" limit an inventor to a restatement of his invention as *originally claimed*, or only to the *subject matter* of the patent taken as a whole.

Another cause for varying decisions has doubtless arisen from an inaccurate or imperfect presentation of the authorities and the equities peculiar to each case.

By keeping these causes for the varying decisions in mind, a ready explanation is had for the curious fact that many correct decisions upon the facts of the particular cases, have enunciated some unsound law.

FIRST PRINCIPLES.

The proposed inquiry into the law of re-issues involves a brief consideration of some elementary principles, the statutes, and the leading cases, in order that we may fully understand the limitations and regulations of the statutes upon the natural or common law right to reform a patent by re-issue.

PATENTS.

Patents are of very ancient origin, and a case was decided as early as the reign of Edward III.

Hindmarch, 4.

Under the law of England all patents are crown grants, and were granted up to the statute of monopolies, 21 Jac. I., for various privileges. The statute of monopolies granted nothing; it simply cut off monopoly patents, and left patents for inventions and new manufactures, as stated by Lord Coke, "neither better nor worse than they were before."

A large portion of the English specifications, as well as of the earlier American, were simple descriptions without claim or summary. The much litigated Neilson Hot Blast Patent had no claim; it was left for the court to discover from the description what the invention was. The invention was to be discovered from the whole instrument in all of this class of patents.

COMMON LAW.

"Statute of 5 and 6, Will. IVc, 83, left untouched
"the common law power of altering and amending the

"entries and proceedings relating to patent grants, and "there are several alterations and amendments which "can only be made at common law."

Hindmarch on Patents, 211.

"Whenever the Lord Chancellor has executed a writ "of Privy Seal, by making a patent of the form com- "manded, and it is afterward discovered that a patent "in that form is not that which *was intended*, the "whole of the previous proceedings may, by Her "Majesty's command, be altered so as to make them "conform *to the intent*; and the altered writ of Privy "Seal being redelivered to the Lord Chancellor, His "Lordship thus acquires jurisdiction to make the pat- "ent correspond with the new form given him in the "writ, if he thinks it lawful or proper so to do."

Ibid, 214.

The differences in relation to patents, being in England prerogative grants and court records, and in this country grants under statutes and records of the Executive Department, are fully considered in *Grant v. Raymond*, and attention is called to the fact that in England, the patent, or the grant to which the great seal is attached, is the controlling part, while with us the specification controls the grant. An alteration therefore, in an English Patent goes of necessity *to the subject matter* direct, as "prior to the reign of Anne (1702) specifications were unknown." Since that time patents are granted months before the specifications are filed.

Ibid, 151.

Prior to the act of July 3, 1832, there had been no legislation on the subject of re-issues, yet early in that year and before the passage of the act, in *Grant v. Raymond*, 6 Pet., 218, the Supreme Court affirmed the right to surrender and amend the specification, in the absence of, and inde-

pendently of any statute, or legislation on that subject, or any statute authorizing the surrender of a patent, on the ground that the government was to fairly execute its part of the contract and give protection for that which the inventor had added to the art; or in other words, that the government having granted a patent it was bound to make it co-extensive with the actual invention.

This law of re-issue, or of reforming patents, was reaffirmed in 1833, in *Shaw v. Cooper*, 7 Pet., 292.

It appears from the brief of Mr. Webster in *Grant v. Raymond*, that the Grant and Townsend re-issue was one of peculiar hardship, as the Raymond machines were built prior to the re-issue, and were not covered by or even described in the original patent, (pp. 229–230) but were described and claimed in the re-issue, yet the Supreme Court sustained the validity of the re-issue.

The open door for fraud pointed out by Mr. Webster, led Congress to interfere, and in interfering it recognized the common law-right of an inventor to have his patent cover all that he had invented, and it closed the door against fraud by *a regulation* cutting off the right of an inventor to include in his re-issue anything for which there was not some foundation laid or found *in his original patent*. Act of July 4, 1836, § 13, incorporating § 3 of the act of July 3, 1832.

Congress, by that act said, in effect, invention being intangible, and there being no way, or at best only a very uncertain and unsatisfactory way, of ascertaining or of disputing the right to the enlarged claim, a patent for an invention shall only be enlarged when there is some proof of the greater or more extended invention in the first title-paper, *i. e.*, the original patent.

LEGISLATION.

The legislation on the subject of re-issues is § 3 of the act of July 3, 1832; § 13 of the act of July 4, 1836, amended in 1837; § 53 of the act of July 8, 1870, which is § 4,916 as incorporated into the revised statutes of 1874. Section 53 of the act of 1870, is a little differently worded from the original act of 1832–'6, but the Supreme Court in *Powder Co. v. Powder Works*, 8 Otto, p. 137, say that the words of the act of 1870, and § 4,916 of the R. S. of 1874, are substantially copied from the act of 1836.

The words of the several acts are: Act of 1836, sec. 13, "Cause a new patent to be issued to the said inventor, for "the same invention, for the residue of the period then un- "expired for which the original patent was granted, in ac- "cordance with the patentees corrected description *and* "specification."

Revised Statutes § 4,916, "Cause a new patent for the "same invention, and in accordance with the corrected speci- "fication, to be issued to the patentee, [or in case of death "or assignment, etc.] "for the unexpired part of the term "of the original patent."

The same section provides for a subdivision into more than one patent. The right of dividing an old patent into *several new patents*, is in the nature of a grant, as no such right existed at common law.

The question arose in *Grant v. Raymond*, as to whether in the absence of any statute authorizing a surrender and re-issue of a patent, the re-issued patent was not so far a new patent as to permit the law concerning use by consent prior to the original application, to apply to the date of application for the new patent, and thus render it void. The court stated

that the question was not free from difficulty; but held that the new patent related back to the original attempt to cover the invention.

This decision was recognized by Congress as sound law; and § 13 of the act of 1836 provided that for all causes subsequently occurring "the patent so re-issued, * * * shall have "the same effect and operation in law, * * * as though the "same had been *originally filed* in such corrected form "*before the issuing* out of the original patent."

This clause is retained in § 4,916, even to the words "*originally filed*;" the words "granted" or "issued," so commonly used in this class of cases, are not in the statute at all in reference to re-issues.

By § 13 of the act of 1836, a patentee might add to his patent subsequent improvements as he made them, by paying a fee of $15 and having his description annexed, and the patent should "hereafter have the same effect in law, to all intents and purposes, as though it had been embraced in the original description *and* specification."

The Patent Office rules, published by Comr. Burke in 1845, and found as a 2nd appendix to Hindmarch on Patents, ed. of 1847, provide as follows:

Rule 30, p. 457.

"And no improvement or alteration made subsequent to "the filing of the application upon which the original patent "was granted, can be introduced into a patent upon re-issue. "Section thirteen of the act of July, 1836, enacts, That, "etc.," repeating the section.

The peculiar wording of the rule clearly shows that the understanding of the office was, that the limitation of "same

invention" in a re-issue, was to cut off these patents, or certificates of improvement, attached later, and that the statute did not cut off the claiming of anything invented prior to the filing of the original application relating to the same machine, or subject matter.

The Office evidently followed the opinion of the Attorney General in Golding's case, 1833, when he was of the opinion that an assignee could not re-issue a patent because "there is no oath from the original patentee verifying the "amended specification, and *testifying that the additions "and alterations now proposed to be made*, were *omitted*. "by mistake in the former patent." The cases of *Grant v. Raymond* and *Shaw v. Cooper* are both referred to.

R. B. Taney, Atty. Gen. 2 Opinions, 575.

The Commissioner of Patents and the Atty. Genl. both construing the acts of Congress as only cutting off actually new and later improvements and different subject matters or machines, and to that extent only, changing the law as found by the Supreme Court in *Grant v. Raymond*, and the Attorney General in 1831, which opinion was as follows:

"As a patent is granted for the benefit of the party, "I perceive no reason why he should not be permitted "to surrender it, and take a new one, *including an "additional improvement*, and having the *same date* "with the original patent."

R. B. Taney, Attorney General, 2 Opinions, 455.

"The thirteenth section of the act 4th of July, 1836, "which remodeled the Patent Law in this respect "made no material change in the act of 1832."

Simpson v. West Chester R. R. Co., 4 How., p. 402.

The 53d section of the act of 1870 became § 4,916 of the Revised Statutes.

The re-issue law was the same under the act of 1836 as under the act of 1870.

Powder Co. v. Powder Works, 8 Otto, p. 139.

If there is any substantial difference between the acts of 1836 and 1870, the difference is, as we shall see further on, that the act of 1870 is the most liberal to inventors; but we shall at least be safe in following the decisions of the court, and claiming that the law of re-issue has remained unchanged since July 3, 1832.

CONCLUSIONS.

Before examining the cases we will re-state the law as it existed prior to July 3, 1832.

1. That the general system of patents rests on statute provisions.

2. That having obtained a patent under the statute, an inventor has a natural right to have it corrected or reformed, if inadvertently wrong.

3. That he had a right to have his patent cover *all* that he had invented in the same machine or same subject matter, whether shown or described in his patent or not.

4. That statutes concerning re-issues are not grants, but are merely limitations or regulations on the exercise of that right, and all that could be done in the absence of legislation can still be done, if not prohibited or restricted.

CHANGES.

We have already sufficiently considered the case which is older than any legislation on this subject, and based solely on the natural or common law right; to wit, *Grant v. Raymond*, 6 Pet., 218; and we now come to an examination of those cases which have been decided since Congress

imposed limitations upon what might be included in a re-issue, in order to ascertain :

1st. What may be resorted to, to determine whether the old embraced the new.

2nd. What is a sufficient foundation, description, or mention in the old.

3d. What effect does the separation of the new from the old, by what is commonly called the claim, have as a limitation.

4th. How much or what is left when the statutory limitations are applied.

5th. What effect do the words of the statute, "inadvertence, accident or mistake" have.

SPECIFICATION.

In order that some peculiarities may be understood, attention is called to the changes of phraseology, in the statutes. In the acts of 1836-'7, we find the words "description *or* specification," "description *and* specification," "specification *of* claim," "specification of *his own* invention." "That on the filing of any such application, *description and specification*, and the payment," etc., and in the re-issue § 13 of the act of 1836, in reference to the first cause for an inoperative patent, the words, "by reason of a defective or insufficient description *or specification*;" and in reference to the second, these words "or by reason of the patentee claiming *in his specification as his* own invention." In the amendment of 1837, § 7, "specification *of* claim," * * * "shall be subject to revision on a surrender" § 9, § 8 "the original specification *of* claim," "shall have in his specification claimed," etc.

From these quotations it will be clearly seen that the word "specification," is no where in the older statutes

applied to the *descriptive* part of a patent, but is *only* applied to the selections of the new from the old, which were mixed in the description. Section 3 of the act of 1793, provides that the inventor "shall deliver a written *description* of his invention;" § 6, of the act of 1836, has the same words; while § 5 provides that the "description, specification, *and* drawings" shall be recorded.

Prior to the act of 1870, a patent contained a *description and specification of invention.* The word "specification" is nowhere used in the older statutes as synonymous with description, or as covering any part of the description except the claim or claims.

In the act of 1870, and the R. S. the word specification is used for the first time in the contract sense, or as describing how the machine is to be constructed, or the ingredients compounded, and as synonymous with description; and the word claim as standing alone or standing, *eo nomine*, for what is selected out as new, is also used for the first time. While in the older acts the nearest use to the word claim is "specification of claim."

In all of the older acts the word specification is used in the first sense given by Webster, who puts it as follows: "SPECIFICATION, *n.* The act of determining by a mark or limit; notation of limits."

"2. The act of specifying; designation of particulars; particular mention," etc.

"3. A written statement containing a minute description or enumeration of particulars, as of charges," etc.

"4. Article or thing specified."

Attention is called to this changed use of the word specification, for the reason that it has an important bearing on

the Revised Statutes, for the provisions there that no new matter shall be introduced into the specifications, only means in to the descriptive part, *and does not refer to the claims at all.* On the changed use of words see, *Bridge v. Hoboken Co.*, 1 Wall., 116.

Section 13 of the act of 1836 evidently contemplated the enlarging of the scope and claims of the patent, as well as restricting it, for by § 7 of the act of March 3, 1837, in order to avoid the effect of a surrender, Congress provided that when a patent was *too broad*, or covered that which the patentee did not truly invent, *such accident, inadvertence, or mistake* might be corrected *by a disclaimer* without the disastrous result of shortening the time covered by the patent, which result followed a surrender, thus really only inflicting that penalty or loss on him who *enlarged* the scope of the patent, as it is clearly provided that he who has claimed too much may reduce his patent without surrender. This privilege is retained under § 4,917 of the R. S.

The act of 1790 required an applicant to deliver a specification *containing a description*, drawings, and model, "which *specification* shall be so particular, and said models "so exact, as not only to distinguish the invention or dis- "covery from other things before known and used, but also "to enable a workman," etc.

This specific language was omitted in the act of 1793 for the new and stronger provision, "That every inventor before he can receive a patent, *shall swear or affirm*, that he does verily believe that he is the true inventor or discoverer of the art, machine or improvement for which he solicits a patent. * * * And shall deliver a written description of his invention * * * in such full, clear, and exact terms, as to distinguish the same from *all* other things before known to enable," etc.

How could this distinction be made without a specification of the items claimed to be new? How could an applicant swear to an application where this is not done and yet so describe his invention, that the invention could be used or applied with what was before known? How could the "principle or character by which it may be distinguished from other inventions" appear if the act of 1793 did not require specifications of claim?

INVENTION.

Invention is primarily a mental operation, *Smith v. Nichols*, 21 Wall., 112. But the law only deals with it as reduced to some tangible and useful form. It does not abstract the thought from the machine, except as theory or object may serve to explain peculiarities in devices, or of operation, and it accepts the machine as the embodiment of the thought.

> "The invention is the machine and the machine is "the invention."
>
> *McClurg v. Kingsland*, 1 How., 202.

> "The thing patented is the invention; so the ma- "chine is the thing patented, and to use the machine "is to use the invention, because it is the thing in- "vented and in respect to which the exclusive right is "secured."
>
> *Wilson v. Rousseau*, 4 How., 646.

> "The mode of operation constitutes the essence of a "machine."
>
> *Winans v. Densmead*, 15 How., 341.

INADVERTENCE, ACCIDENT, OR MISTAKE.

> "INADVERTENCE. 1. Not turning the mind to; inat- "tention; negligence; heedlessness. Many mistakes "and some misfortunes proceed from inadvertence. 2.

"The effect of inattention; any oversight, mistake, or "fault which proceeds from negligence of thought."

"ACCIDENT. 1. Coming or falling of an event that "takes place without one's foresight or expectation; "an event which proceeds from an unknown cause, and "therefore not expected; chance; casualty; contin- "gency. 2. That which takes place or begins to exist "without an efficient cause and without design."

"MISTAKE. 1. An error in opinion or judgment; "misconception. 2. A slip; a fault; an error."

WEBSTER.

These accidents or mistakes refer to accidents or mistakes in law, as well as to those of fact.

Wyeth v. Stone, 1 Story, p. 295; 2 Robb., p. 44.

"Accident, mistake or *ignorance*."

Whitney v. Emmett, 1 Bald., p. 316; 1 Robb., p. 593.

These causes or reasons for re-issue seem to be amply sufficient and to cover almost any cause short of fraud or fraudulent intention; and even the question of fraud cannot be raised by an infringer.

Seymour v. Osborne, 11 Wall., 516.

All questions relating to the validity of the Grant re-issued patents, as against infringers, are foreclosed by the action of the Commissioner, and the only open question special to re-issues, is whether the new patent is for the same invention as the old.

Seymour v. Osborne, 11 Wall., 516.
Stimpson v. West Chester R. R., 4 How., 380.
Battin v. Taggart, 17 How., 74.

It becomes important, therefore, to understand just what is meant in law and in fact by "same invention," and what may be resorted to to determine this in each case.

SAME INVENTION.

Much of the confusion and floundering on the law of re-issues has arisen from the fact that until recently there has not been any definition as to the meaning of the words "same invention." The question as to whether a given re-issue describes and claims the same invention as its original must, in the very nature of things, be a question of fact and not of law; but it having become settled law that the action of the commissioner on this question of fact is final, the only question left is, whether the commissioner has exceeded his authority and right under the law, which only permits a new patent for the same invention. This is strictly a question of fact, but it is of such a nature that it has become the settled practice for the court to decide it as a matter of legal construction, upon a comparison of the old and the new patents, aided by experts when the devices or the technical terms used are difficult.

Seymour vs. Osborne.

See also Bump's Law of Patents, 178 and 179, and authorities there cited.

Now an invention is a mental operation which, when it is worked out into some useful form becomes a patentable invention; and as inventors are usually more expert with tools than with the pen, the fairest and best test *for them* as to what was actually produced is the machine shown by the model, or in the drawings made therefrom. The next fairest is the written description, provided that it has been understandingly read by or to them. The poorest of all is the claim, for it is a well-known fact that, while there are many who can write good descriptions, there are but few who have the peculiar qualities of mind, and the inform-

ation necessary to grasp the whole, and select therefrom that which is new, and present it in such apt words as to protect the inventor; therefore it usually happens that when the entire older art has been gathered and examined, it is found that the descriptions and claims drawn in partial ignorance and subjected to whims, are not sufficient to protect the inventor, consequently nearly all patents for valuable inventions have had to be re-issued one or more times, and this, usually without any fault on the part of the inventor, and frequently without the fault of the solicitor or the Patent Office.

SAME INVENTION.

The "same invention" at common law is all that the patentee invented, in relation to *the subject matter* of the original patent, without the limit of a previous showing, and is only limited by statute to what he has substantially described and indicated somewhere in his devices, or drawings, and even this limitation is taken off from composition and chemical patents.

The additional prohibition of the act of 1870 is, that no *new devices* for carrying out even the same invention shall be introduced into the new specification, and that is the true meaning of the words "*new matter*."

A new or re-description of the old devices, and of their operations is not and cannot be *new matter*, as we shall see further on.

That unjust advantages have been taken of the right to re-issue is not denied, and the splitting of devices and circling all sorts of combinations around a single new feature cannot be justified.

Some of the earlier authorities held the question of "the same invention" to be a question of fact to be submitted to the jury; but in *Rubber Co. v. Goodyear*, 9 Wall., 797, the court held that it was a question of legal construction to be determined by the court upon an inspection and comparison of the two papers. In *Seymour v. Osborne*, 11 Wall, 516, the court held that an infringer was precluded from examining into all preliminary matters, and that the question of same invention was to be determined by an inspection and comparison, aided or unaided by the testimony of experts, as technical or difficult art terms might appear, "as matter of legal construction."

> "Power is unquestionably conferred upon the commissioner to allow the specification to be amended if "the patent is inoperative or invalid, and in that event "to issue the patent in proper form; and he may, doubtless, under that authority, allow the patentee to describe his invention, and to include in the *description "and claims* of the patent not only what was well described before but *whatever else was suggested or substantially indicted* in the specification or drawings, "which *properly belonged* to the invention as actually made and perfected."

Seymour v. Osborne, 11 Wall., 516.

NEW MATTERS.

What is new matter under § 4,916?

This section contains a clause authorizing the commissioner to issue "a new patent for the same invention," and there is added this clause, "but no new matter shall be introduced into the *specification*," it therefore becomes important to know what is included in the term "new matter," and what restriction is placed on a re-issue by a clause

which extends only to the *specification* and not to the *claims* under the changed phraseology herein before noted.

This query is substantially answered in *Seymour v. Osborne*, 11 Wall., 516, a case decided after the passage of the act of 1870, which was referred to where the court says:

"Interpolations of *new features, ingredients, or devices*, "which were neither *described, suggested, nor indicated* in "the original patent, or patent office model, are not al- "lowed."

"The patentee cannot under such application make "material additions to the invention which were not "described, suggested, or substantially indicated in "the original specifications, drawings, or Patent Office "Model."

Seymour v. Osborne, 11 Wall., 516.

"It is not the meaning of the law that the patentee "who applies for a re-issue must at his peril describe "and claim in his new specification, either in *words or* "*idea*, just what was described and claimed in his old "one; his new specification must be of the same in- "vention, and his claim cannot embrace *a different* "*subject matter* from that which he sought to patent "originally."

Grier & Kane in French v. Rogers, 1 Fish., 138.

In reference as to what is meant by "new matter," the Supreme Court in *Powder Co. v. Powder Works*, gives the following definition of the term:

"This prohibition is general relating to all patents, "and by 'new matter' we suppose to be meant new "*substantive* matter, such as would have the effect of "*changing* the invention, or of *introducing what* "*might be the subject of another application for a* "*patent.*"

Powder Co. v. Powder Works, 8 Otto, p. 138.

"Patentees are a meritorious class, and all the aid "and protection which the law allows, this court will "cheerfully give them."

Com. of Pats. v. Whiteley, 4 Wall., 522.

Re-issues are not to be discouraged for:

"Accurate descriptions of the invention is required "by law, for several important purposes; 1. That the "Government may know what is granted, and what "will become public property when the term of the "monopoly expires; 2. That licensed persons desir- "ing to practice the invention may know, during the "term, how to make, construct, and use the invention; "3. That other inventors may know what part of the "field of invention is unoccupied."

Bates v. Coe, 8 Otto, 31.

WHAT MAY BE RESORTED TO, TO DETERMINE WHETHER THE OLD PATENT PERMITTED THE NEW.

1. The original patent description and claims.

   § 4,916, R. S.; § 53, act of 1870; § 13, act of 1836.

   Seymour v. Osborne, 11 Wall., 516.

   Bell v. Langles, 12 Otto, 128.

2. The drawings, for aiding or correcting the description.

   § 4,916, R. S.; 11 Wall., 516.

   12 Otto, 128.

Drawings may be referred to for the purpose of adding something to the specification or claim not specifically contained or mentioned therein.

Washburn v. Gould, 3 Story, p. 139.

The drawing is a part of the patent, and may be referred to in order to help out the description.

Emerson v. Hogg, 2 Blatch., 9.
Hogg v. Emerson, 11 How., 606.

3. The Patent Office Model, to correct description.

§ 4,916, R. S.; 11 Wall., 516.
12 Otto, 128.

The model is a part of the original application, but is not a part of a patent.

There is no dispute or question as to the propriety and right of examining all of these sources for a foundation for a statement or claim in a re-issued patent.

The conclusion reached in *Morey v. Lockwood*, could only be reached by examining.

4. The original application.

"Shall have the same effect and operation in law * * * as though the same had been *originally filed* in such corrected form."

§ 4,916, R. S.

There are numerous Circuit Court authorities as to the right of a patentee to resort to the original application for proof as to what his actual invention was, but the Supreme Court in *Powder Co. v. Powder Works* held, that while the original application might be looked into, it could not be used to justify the insertion of an invention which was not shown or described in the patent as issued, although it was described in a canceled specification, which leaves the law in this respect to be, that under the words "same invention," a canceled specification is not *of itself* a sufficient foundation to support a re-issue.

The original application may, however, be resorted to to show what was *intended* by what was fully or defectively described or shown in the original specification and drawings, and to determine the true character of what appears in the original patent; and in the following case, the originally filed specification was used as limitation on an original patent, the original application having been filed by the inventors, and the changes made by an assignee.

> "The original application for letters-patent (with its "accompanying *Drawings and Model*), filed by an in- "ventor, should possess great weight in showing *what* "*his invention really was.*"
>
> *Railway Company v. Sayles*, 7 Otto, 554.

> "The application filed by them in the Patent Office "in June, 1877, is the first *authentic evidence*, of a "public character, of *what their invention was.* A copy "of this application and of the drawings and model by "which it was accompanied have been exhibited in "evidence, and necessarily constitute an important "feature of the case."
>
> *Ibid*, p. 557.

> "It will be observed that we have given particular "attention to the original application, drawings, and "models filed in the Patent Office. * * * The law "does not permit such enlargements of an original "specification, which would interfere with other inven- "tors who have entered the field in the meantime, any "more than it does in the case of re-issues of patents "previously granted."
>
> *Ibid*, p. 563.

In *Woodworth v. Stone*, 3 Story, 749, it was held that the very purpose of a re-issue, was to make the new patent different from the old one; and that to hold the new one void, as not being for the same invention as the original, there must be "a clear *repugnance* between the old and the new patent."

ELEMENTS OF ORIGINAL COMBINATION MAY BE OMITTED.

In *Battin v. Taggart*, 17 How., 74.

The law of re-issue was considered upon a patent which originally claimed coal breakers combined with a screen, and as re-issue claimed the breaker only, *dropping the screen out*, and the court said:

> "Whether the defect be in the specifications, or in "the claim of a patent, the patentee may surrender it, "and, by an amended specification or claim, cure the "defect. * * * The re-issued patent must be for the "same invention, substantially, though it be described "in terms more precise and accurate than in the first "patent. Under such circumstances, a *new and dif-* "*ferent* invention cannot be claimed." * * *
>
> "By the defects provided for in the statute, nothing "passes to the public from the *specifications or claims*, "*within the scope of the patentees invention*."
>
> "The claim and specifications in this patent, as "amendatory of the first, were within the 13th sec- "tion of the act of 1836. It is said, with entire ac- "curacy, in the charge, in regard to the amended "specification of the patent of 1849, that it '*described* "essentially the same machine as the former one did, "but *claimed*, as the thing invented, the breaking ap- "paratus only.' And this the patentee had a right "to do. He had a right to restrict or enlarge his "claim."

Here a combination claim for breaking device with a screen was changed from the combination of a coal-breaker with a screen, to the breaking device alone.

In *Burr v. Duryee*, 1 Wall., 531.

The court without deciding it, raised the question as to the right to surrender and re-issue a patent which had been

held to be valid upon an adjudication, but it had been done in the case of the Woodworth patent after repeated adjudications favorable to the patent, and the re-issue sustained, and was done with the Nicholson patent recently sustained in *Elizabeth v. Pavement Co.*, 7 Otto, 126. Although this point does not appear to have been raised in these last cases, the law as it stands undoubtedly is, that a patent, not fully available, may be surrendered and re-issued, notwithstanding the fact that it is valid as far as it goes.

The real point decided in *Burr v. Duryee*, 1 Wall., 531, was, that the invention of the original patent was a machine, that a claim for a process generalized up into means, independent of the means shown and described for carrying such process out, or one or more of the several steps of such process, is too vague and general to be valid, when the machine is only an improvement. This is doubtless sound law, and is just as applicable to an original patent as to a re-issue.

This case, in fact, has no bearing on re-issues, as it neither states nor decides any point bearing on the *law* of re-issues. It finds as a *fact*, that the generalized *process* of the re-issue, made independent of the specified special means, is not the same invention as the original machine.

In *Klein v. Russell*, 19 Wall., 433, the first re-issued claim was for one only, of a number of ingredients included in the original claim, some of which were mere coloring matter. The court says:

> "The omission of any one, or all, of the ingredients "would have given immunity to an infringer. To "remedy this defect the re-issue was procured," and it sustained the re-issued patent.

The case was criticized in *Russell v. Dodge*, 3 Otto, 460, and the law of re-issues restated to some extent, but it will

be seen, when compared with the other cases, that the law in *Klein v. Russell* is correctly stated, and is not changed in *Russell v. Dodge*. The court found as a question of fact, that a re-issue for a fat liquor alone was not for the same invention as a *heated* fat liquor with other ingredients, It was shown in the last case, that the use of the same fat liquor alone, and in a cold condition was common and old in the art; on such facts the re-issue would be void while the original might be good, and therefore both could not be for the "same invention," as one was for a valid invention, and the other for no invention at all.

The law was stated in a later case decided at the same term, *Smith v. Goodyear Dental Vulcanite Co.*, as follows:

> "The defendant must overcome the presumption "against him, arising from the decision of the Com- "missioner of Patents, in granting the issue; and this "he can do only by showing, from a comparison of the "original specification with that of the re-issue, that "the former does not substantially describe what is de- "scribed and claimed in the latter. *This must plainly "appear before we can be justified in pronouncing "the re-issued patent void.*"
>
> *Smith v. Goodyear Dental Vulcanite Co.*, 3, Otto, 486.

In *O'Reilly v. Morse*, 15 How., 62, the following exceptions were taken. (p. 99.)

> "Tenth. Morse's patent of 1840, as secondly re- "issued, is void, because it is broader than the inven- "tion originally patented. * * * Thirteenth. The "surrender and re issue on account of a defective "specification authorizes amendments only, and not "changing the specification into a new one, nor does "it authorize new claims."

These exceptions were not special to the 8th claim, as that came under the "fourteenth." The court disposed of the exceptions summarily by saying:

"There is nothing in the proof, or on the face of the "re-issued patent to show that the invention therein "described is not the same with the one *intended to be* "*secured* by the original patent. * * * Variations "from the description given in the former specifica- "tion do not necessarily imply that it is for a different "discovery. The right to surrender the old patent, "and receive another in its place, was given for the "purpose of enabling the patentee to give a more per- "fect description of his invention, when any mistake "or oversight was committed in his first. It neces- "sarily, therefore, varies from it."

O'Reilly v. Morse, 15 How.. p. 111.

"Original patent in this case was surrendered, and "on the 7th of February, 1860, four distinct re-issues "were granted. Prior patent, as already explained, "embraced those improvements in its specifications, "but the claim was restricted to the principal improve- "ment. Object of the surrender was *to correct that* "*part of the specification known as the claim*, and it "is admitted by the defendants that the re-issues cover "all of the improvements specified in the assignment, "and no more than what was embraced in the original "*specification*."

Read v. Bowman, 2 Wall., 591.

BROADER CLAIMS.

"Where a limitation of a claim, as found in a patent, "has been caused by a mistake of the Commissioner of "Patents in supposing that prior inventions would be "covered, if the claim was made, as the applicant "makes it, more broad, and an inventor has thus been "made to take a patent with a claim narrower than his "invention, it is the right, and, as it would seem, the "duty of the Commissioner, upon being satisfied of his "mistake, as to the nature of the prior inventions, to "grant a re-issue with an amended specification and a "broader claim."

Morey v. Lockwood, 8 Wall., 230.

"A patentee, or his representative, in a re-issue may "*enlarge* or restrict the claim, so as to give it validity "and secure the invention."

Rubber Co. v. Goodyear, 9 Wall., 788.

"The claims of a re-issue may be restricted or enlarged to cover the real invention."

Dorsey Co. v. Marsh, 6 Fish., 388.

The case of *Gill v. Wells*, 22 Wall., 1, has been much commented on by the courts and by the bar; but a careful consideration of the case shows that it does not sustain the position contended for by those who seek to avoid re-issued patents. In this case, p. 24, it is stated, as the law of re-issue, that he (the inventor) "may give the description of the several combinations in one specification, and in that event he can secure the full benefit of the exclusive right to each of the several inventions by separate claims referring back to the description in the specification; and if by inadvertence, accident, or mistake he should fail to claim any one of the described combinations, he may surrender the original patent and have a re-issue not only for the *combination or combinations* claimed in the original *but for any which were so omitted* in the claims of the original patent."

All that the court held in this case that seems to militate against re-issues—although stated as questions of law—are really questions of fact, or of law applied to special facts found. The court found that the "tunnel or chamber" was a single and integral device, which could not be separated into four devices, and the bottom be described as a "bottom plate or guide," the side-boards as "side guides," and the top as a "guide or deflector," and the several portions made the basis of separate combination claims,

when the entire device with its bottom, top and sides were required to make a chamber or tunnel in order to make an operative machine, or device; and that the dividing of an integral device into fourths and describing each as a complete device was new matter. This conclusion was reached after "patient search had been made *in vain*" for any description in the original patent, that would justify such subdivision.

It is true that the court says that a different rule from the one quoted applies when but a single combination embracing all of the parts is the subject of a patent, provided there is no suggestion, *indication, or intimation* that any other invention *of any kind* has been made; but it says, p. 23, that examples of the kind, if any, it is believed, are very few in which such a re-issued patent has been granted, where there is not a word in the original specification to support the theory that the patentee ever invented anything except his described combination.

The *Corn Planter Case*, 23 Wall., 181, while it does not profess to declare any re-issue law, is instructive in its bearings on the case at bar, from the fact that the 2d original claim of the first patent was merely an arrangement claim, and on the 2d re-issue was expanded into five separate patents. The original 1st claim and its subject matter was entirely dropped out. The 2d patent had originally only a single combination claim, and on its second re-issue was also expanded into five separate patents. Of the ten re-issue patents, four were sustained, four found to be anticipated by the older art, one was not involved in the suit, and one was found to be not of sufficient dignity to be the subject matter of a patent. The court proceeded to pass on each claim upon its merits without regard to the fact that the original of each division into five was a single

combination claim, and this notwithstanding the fact that the question was raised that the re-issues were not for the same invention as the original. See p. 238.

This case is also important in the fact that it is the first patent case decided, after *Gill v. Wells*; and that—against the protest of the minority of the court—it quietly sets that decision aside, in so far as it was attempted to declare the law to be, that an original single combination claim could not be reduced in the number of its elements, or made into several new claims or patents.

We contend that the case of *Gill v. Wells* does not go to the extent of declaring the law to be that the original claim or claims defined the boundary of the invention, if such claims were for combinations, and that a change or departure therefore was new matter. If, however, the case is susceptible of such a construction, or does so declare the law, then it will be found fairly overruled by this later case, which restores the old rule that the boundary of the invention is the drawings, specification, claim, and the model, and that inventions claimed as combinations of all old elements may be changed to the true invention, and to as many claims, that are distinctive, as may be found to be of the patentee's invention, just the same as any other patent; and that they are subject only to the same restriction, that the re-issue must not contain matters not somewhere found in the original machine, as shown by drawings and model, or "suggested, intimated, or described" in the specification, including the claim or claims.

The case of *Vance v. Campbell*, 1 Black, 428, is sometimes referred to as an authority against the right to drop an element out of a combination, but this case has no reference to re-issue law; there the attempt was to drop out

an element, *without re-issuing*, by proving that the omitted element was worthless, and had never been used under the patent. The court properly held that a useless element *of a claim* could not be gotten rid of in that way. There is no intimation that it might not have been done by following the law, and re-issuing the patent.

CASES COMMENTED ON.

In the Wood paper case, 23 Wall., 567, while one of the re-issue patents was found not to be for the same invention as the original, the law of re-issues is not stated or discussed.

In *Fuller v. Yentzer*, 4 Otto, 288, the court sustained the re-issue; but, disregarding the functional wording of the claims, held the patents to special devices. Re-issue law is not discussed.

In *Marsh v. Seymour*, 7 Otto, 348, the law of re-issues, as stated in *Seymour v. Osborne*, is repeated and affirmed, p. 356.

Collar Co. v. Van Dusen, 23 Wall., 530. In this case p. 557, the law of re-issues in *Seymour v. Osborne* is restated, but the re-issue of the Evans Patent was held void, because the original patent described as the material "a fabric known to the trade as parchment paper," and claimed a varnished collar made of this paper. The re-issued patent described the paper and the process of making, both of which were proven to be old, and the new claim was for an unvarnished collar made of paper manufactured in the way described, which was the process of making the old parchment paper. The court might well hold that to be a different invention. The Gray patent was found to be void, because anticipated in the art, and not because of changes by re-issue, which were considerable.

In *Leggett v. Avery*, 11 Otto, 256, the law of disclaimers and re-issues is mixed, and some of the dicta are opposed to a long line of authorities; that in reference to rejected claims as applied to re-issues is opposed to *Morey v. Lockwood*, 8 Wall., 230, but as it is only expressed as a matter of doubt, it cannot be taken as overruling that case, where it was held that the Commissioner having wrongfully restricted the patentee, on the state of the art shown by the office (*i. e.* the reference cited) it was *his duty* to grant a re-issue with enlarged claims.

The rule in *Morey v. Lockwood*, that no man should be allowed to suffer from ignorance or misjudgment in the Patent Office, seems to be the equitable one.

The law of re-issue is so ably stated by Judge Clifford, in *Thomas v. The Shoe Machinery Co.*, 16 O. G., 541, that we have copied it as a fitting and complete condensation of the whole law.

> "Patents may be surrendered to be corrected, and the "power to surrender implies that the specification may "be corrected to the extent necessary to cure the de- "fects and to supply the deficiencies to render the "patent operative and valid; but the patentee may not "interpolate new features not described, suggested, or "substantially indicated, either in the specification, "drawing, or Patent Office model. Interpolations of "the kind, if material, show that the Commissioner "exceeded his jurisdiction, and where that is done it "clearly becomes the duty of the court to declare the "patent void. Courts of justice will avoid such a con- "clusion if they can reasonably do so by a proper ap- "plication of the maxim that patents are to receive a "liberal construction and if practicable, be so inter- "preted as to uphold and not destroy the right of the "inventor (*Turrill v. Railroad*, 1 Wall., 491; *Ames v.* "*Howard*, 1 Sum., 482; *Blanchard v. Sprague*, 3 Id., "335; "*Glue Co. v. Upton*, 6 Official Gazette, 839).

"Slight changes will not sustain such a defense, nor "will the court in any case declare the patent void on "that account, if, by the true construction of the two "instruments, the invention secured by the two instru- "ments is not substantially different from that em- "bodied in the original patent. Inquiries in such a "case are restricted to a comparison of the terms and "import of the two patents in view of the drawings and "Patent Office model. If from these it results that "the invention claimed in the re issue is not substan- "tially different from the one described, suggested, or "indicated in the specification or drawings of the orig- "inal patent or Patent Office model, the re-issued pat- "ent must be held valid, as all other alterations and "amendments plainly fall within the intent and pur- "pose of the provision in the act of Congress which "allows a surrender and re-issue; or, in other words, "*if the re-issued patent does not, upon the face of the in-* "*strument, embrace anything not substantially described,* "*suggested, or indicated in the specifications, drawings,* "*or model of the original, the defense that the re-issued* "*patent is not for the same invention as the original must* "*be over-ruled.*"

EFFECT OF MAKING CLAIMS.

The separation in the specification of the new from the old by what is commonly called the claim does not appear to have any effect, for the act of 1836, and the acts amendatory thereof, speak of description *and* specification, clearly referring the word "specification" to the statement or specification of items claimed as new, and the cases arising under that act hold that amendments may be made by the description *or* specification.

The act of 1870 speaks of specification *and* claims, clearly referring the word "specification" to the description, so that if construed strictly the original claim is not to be resorted to for purpose of limiting amendments, and, if so

construed, then the original claims are eliminated and cannot be considered either as defining or limiting the invention for re-issue purposes, but the re-issue is to be considered as though no original claim had been attached, or had ever been made.

The office of a claim is not to aid the description, but to select from the description what is new.

Curtis on Pats., § 227

The claim or summing up is not to be taken alone but in connection with the specification and drawings; the whole instrument is to be taken together.

Brooks v. Fisk, 15 How., 215.

It has always been the course of the American Courts, and latterly of the English, to construe patents fairly and liberally and not subject them to any over-nice and critical refinements.

Ames v. Howard, 1 Sumner. 485.
Cuver v. Braintree M. Co., 2 Story, 446.
Brooks v. Becknall, 3 McLean, 437.
Allen v. Hunter, 6 McLean, 311.

"'The true rule of construction in respect to patents "and specifications, and the doings generally of inven-"tors, is to apply to them plain and ordinary princi-"ples, as we have endeavored to on this occasion, and "not, in this most metaphysical branch of modern law, "to yield to subtleties, and technicalities, unsuited to "the subject and not in keeping with the liberal spirit "of the age, and likely to prove ruinous to a class of the "community so inconsiderate and unskilled in business "as men of genius and inventors usually are."

"Indeed, the English letters-patent themselves now, "however different may have been once their form or "the practice under them, declare that 'they are to be "construed,' 'in the most favorable and beneficial "sense, for the best advantage,' of the patentee."

Hogg v. Emerson, 6 How., p. 485.

The attempts to limit the invention to the matters *originally claimed*, as is seen from the authorities cited, is a failure. It is the unmistakable law, that patents *with* claims are to be treated the same as the old ones that were *without* claims; that is, the invention is to be selected out from the description with or without claims, the drawings and the model all taken together and as a whole, that (provided new devices are not introduced) all may be changed in description, drawings, and claims, the drawings and model to be changed only each by the other.

OLD MACHINE.

In *Whiting v. Emmett*, 1 Baldwin, 303, the court held a specification sufficient, if it could be carried into effect by the means pointed out in the specification, drawing, model, and *the old machine*.

1 Robb, 567; p. 584.

Under the laws of the United States the foundation of the right to an exclusive use is created by the *invention* and not by the *patent*.

Webster's brief in *Pennock v. Dialogue*, 2 Pet., 1.

It is under this head that the case of *Manufacturing Co.* (Swain Turbine) *v. Ladd*, 12 Otto, 408, comes in. The court says:

> "The *mistake* of the patentee (or his assigns) seems "to have been in supposing that he was entitled to "have inserted in a re-issued patent all that he might "have applied for, and had inserted in his original "patent. The appellant produced on the argument, "exhibits tending to show that the patentee before "obtaining his original patent had made and done all "those things which are embraced in, or covered by

"the re-issued patent," p. 413. "In a clear case of "mistake, not error in judgment, the patent may un- "doubtedly be enlarged." p. 411.

Having obtained the complete record in this case, we find that original description of operation which was in accordance with the devices shown, was dropped out, and a new one not so in accord inserted; that the change was justified when proving that the old was wrong, by producing a model and two machines older than the original patent, which were not like the one originally shown, but which were like the re-issue. It was a case where the patentee erred in selecting the best form of wheels for his patent, like the Evarts' Shingle Machine Patent, and the case of *Evarts v. Ford*, 6 Fish., was cited by the appellee

The point of this case is, that a machine older than the original application cannot be used as a foundation for a re-issue, and the court instead of declaring any new law simply enforced the statute.

CAUSES FOR SURRENDER.

The reasons for surrender and the acts done in obtaining a re-issue are presumed to be regular and are not re-examinable.

R. R. Co. v. Stimpson, 14 Pet., 448.

And all inquiry is closed.

Stimpson v. R. R Co., 4 How., 380.

In this case the court held that the question as to whether the re-issued patent is for the same invention as the original was a question of fact and not of law. The later authorities are to the effect that, as against an infringer, all questions of re-issue are foreclosed, except the naked question as to whether the re-issued patent is for the same invention as the original. See :

Seymour v. Osborne, 11 Wall., 516.
Blake v. Stafford, 3 Fish., 294.
Forbes v. Barstow Stove Co., 2 Cliff., 379.
Potter v. Holland, 4 Blatch., 238.
Thomas v. Shoe Machinery Co., 16 O. G., 541.
Bull v. Langles, 12 Otto, 128.

Under the later authorities, the question of "same invention" is not treated as a question of fact, but as a mixed question of law and fact, to be determined by the court, on the question as to whether or not the commissioner has exceeded his authority in granting the re-issued patent.

"In whatever manner the mistake or inadvertence may have occurred is immaterial."

Stimpson v. R. R. Co., 4 How.

NOT NEW MATTER TO ENLARGE UPON USES AND RESULTS.

"An inventor is entitled to all the uses to which his "patent may be applied, and to all the beneficial re- "sults which legitimately follow the use of his instru- "mentalities, as shown by the statement of his inven- "tion, and the figures used to illustrate it; and such "uses and results may be stated and described in an "application for re-issue by the inventor, without sub- "jecting himself to the imputation of incorporating "new matter."

Nixon J., in Putnam v. Yerrington 9 O. G., 689.

WHAT RIGHTS REMAIN WHEN THE STATUTORY LIMITATIONS ARE APPLIED.

We have already found that, in the absence of any legislation, a patentee might include in a re-issue, 1st, All that he had invented when he first applied for a patent, whether described or not; 2d, That he might include in his re-issue

inventions made later than the date of the original patent; 3d, That the only penalty for including such later improvements on the same machine in the same patent was the shortening of his monoply, as all expired at the expiration of the original patent; and 4th, That all of these additions were covered by his oath, and the re-issue was not void for containing older or later inventions.

It being considered that this condition of the law left an open door for fraud, Congress interfered to restrict the law on this subject, and to regulate the practice. It *granted* nothing, unless it was the right to divide into more than one patent, § 5, act of 1837, § 4,916, R. S.

Congress in regulating re-issues cut off:

1st. The right to include in ventions not shown, described, or intimated in the original patent, because it left an open door for fraud; because where there was no description, or showing, no man, however skilled in the art, could determine what the patentee had or had not invented; and because no foundation had been originally laid for such claims.

2d. The right to include later inventions, because the re-issue, relating back to the original file date, gave a fictitious date for such later improvements, and cut off intervening defenses.

As a compensation for cutting off the right to include later inventions, it granted the right to tack on additional descriptions of, and claims for them by their true date.

This right of tacking on was cut off by the act of 1861, which directed that where they were theretofore allowed,

separate patents running full time might be issued; and this change in the law was the main cause of the "flood of patents" since issued.

The two changes noted are all the changes that were made by the statute, and, with the exception of these two changes, the law remains as it was prior to any legislation. Anything which the patentee has actually invented, and for which he can show any substantial foundation in his description, sustained by the drawings or model, can be redescribed and claimed by him in a re-issue, whether claimed or not originally.

In the nature of things the application of the law, (as stated by the Court in *Burr v. Duryee.*) must be to the facts of each case as it arises, and cannot be stated in advance.

WHAT AMOUNTS TO A SUFFICIENT FINDING IN THE SOURCES TO WHICH REFERENCE MAY BE HAD.

1st. A description in the specification:

Seymour v. Osborne, 11 Wall., 516.
Corn Planter Case, 23 do., 181.
Marsh v. Seymour, 7 Otto, p. 356.
Battin v. Taggart, 17 How., 74.
Morris v. Rodger, 3 Fish., 176.
Black v. Thorn, 10 Blatch., 66.
Sarven v. Hall, 5 Blatch., 415.
Chicago Co v. Busch, 4 Fish., 395.
Westinghouse v. Brake Co., 9 O. G., 538.
Ball v. Langles, 12 Otto, 128.

2nd. Any thing shown in the drawing, and described:

Seymour v, Osborne.
Marsh v. Seymour.
Decker v. Grote, 6 Fish., 143.
Dorsey Co. v. Marsh, 6 Fish., 387.
Wells v. Jacques, 5 O. G., 364.
U. Spring Co. v. U. C. Spring Co., 12 Blatch., 180.
Ball v. Langles.

3d. Anything found in the model, and described:
Seymour v. Osborne.
Ball v. Langles.

See also cases cited on 1st and 2d, and
Hogg v. Emerson, 6 How., 437.

4th. Substantial *indications* in specification:
Seymour v. Osborne.
Marsh v. Seymour.

And cases cited on 1st and 2d.

5th. Whatever else was fairly *suggested.*
Seymour v. Osborne.

"*Revealed* by the original specification."
Ball v. Langles.

LACHES.

From the commencement down to the decisions of this term—Oct. 1881—there has not been any very serious difficulty in understanding the law of amending patents, when the facts of each case were understood; but in *Miller v. Brass Co.*, 21 O. G. 201, the doctrine of laches has been applied, and a two-years limitation introduced, from an analogy with the statute limiting original applications, which is repeated in a later case.

An examination of the law will show that the two years of grace is a grant, and that, while it is a grant, it is of course a limitation and a statutory bar, yet it is not strictly an abandonment.

Lapse of time does not *per se* constitute adandonment.

Andrews v. Carmen, 13 Blatch 307.
Russell Mf'g. Co. v. Mallory, 5 Fish 632.
Page v. Bowens, 1 O. G., 321.
Birdsell v. McDonald, 6 O. G. D., 682.
Freund v. King, 11 O. G., 2.

In England patents are granted to importers and introducers, as well as to inventors, the language of the statute —21, Jac, 1, c, 3,—only requiring that the subject matter should be for that "which others at the *time of the grant* shall not use."

Under this and subsequent acts the English courts have uniformly held that a single use in public by the inventor or importer, a day prior to his application, was a bar to his obtaining a valid patent.

A public use was defined to be "a use and exercise *in public*, not by the public."

Carpenter v. Smith, Web., P. C. 540.

Hindmarch, page 69 says: "When we say that an invention granted by a patent must be new, the meaning is, "that *the subject* of the privilege, or *the art* must be new "at the date of the patent. Therefore, if such an art has "become publicly known, or been publicly used, in any "way or for any purpose whatsoever, it cannot afterwards "be made the subject of a privilege, even for a new application."

This subject is considered at length in *Cornish v. Keene* 1 Web., P. C. 508.

The terms of the act of 1793 were "not known or used before the application," and under this act and the act of 1836, down to the amendment of March 3d, 1839, the strict application of the English rule was enforced.

Pennock v. Dialogue, 2 Pet., 1.
Shaw v. Cooper, 7 Pet., 292.
Kendall v. Winsor, 21 How., 322.

Section seven of the act of 1839 gave an inventor two years in which to use and practice his invention in public, and in reference to this change in the law, the court in considering this section says:

> "This relieved him from the effect of former "laws and their constructions by this court, unless "in case of abandonment of the invention or a con- "tinued prior use for more than two years before "the application for a patent, while it puts the per- "son who has had such prior use on the same foot- "ing as if he had a special license."
>
> *McClurg v. Kingsland*, 1 How., p., 209.

From this we see that at common law, or in the absence of any statute, the moment that the public became possessed of an invention, in the absence of a patent or an application, that moment it ceased to be the subject matter of a valid patent.

Where, however, the knowledge of an invention comes to the public *through* a patent, or from a properly presented application, *no public rights attach before the patent expires.*

In *Wilson v. Rousseau*, 4 How., p. 688, the court says:

"10. That the Commissioner of Patents can lawfully re-

"ceive a surrender of letters patent for a defective specifi-
"cation, and issue new letters patent upon an amended
"specification, after the expiration of the term for which
"the original patent was granted, and pending the exist-
"ence of an extended term of seven years; and that such
"surrender and renewal may be made *at any time* during
"such extended term."

See also;

Hussey v. Bradley, 2 Fish., 362.
French v. Rogers, 1 Fish., 133.
Gibson v. Harris, 1 Blatch., 167.

It matters not *when* or how the patentee discovered the mistake, provided it was a mistake.

Poppenhusen v. Falke, 2 Fish., 213.

The statute— § 4,916—does not fix or limit any time when a re-issue may *be* had, but the first word of the section "whenever" would seem to indicate that it might be done at any time during the life of the patent, and the section distinctly provides that "whenever" any patent is re-issued, it "shall have *the same effect and operation in law*, "on the trial of *all* actions for causes thereafter arising, as "if the same had been *originally filed* in such corrected "form." How can language be plainer. How can laches apply to an act which by statute is made to relate back to the first step in the entire proceeding.

APPLICATION.

Having fully considered the law of re-issue we come now to its application to the re-issues in these cases; and when it is applied, we feel assured that each and every re-issue, with all the claims made, will be found to be fairly

within the law, and upon a comparison with the originals, free from the only objection that the law permits an infringer to make.

COMPLAINANTS' PATENTS

RE-ISSUE NO. 6,451 MARSHALL.

The 1st claim of this patent is as follows :

> "The process herein described for packing and preserving meats, the same consisting in subjecting the meat, after it has been exposed to preserving processes, as described, to a heavy pressure and packing and hermetically sealing the compressed meat in packages or boxes, substantially as and for the purpose herein set forth."

This is a restatement of the original 1st claim; it it not as broad, and is more specific. It is properly founded on the original claim and on the original specification as will appear from the following quotations :

> Original 1st claim : "Expressing" (subjecting) "the meat to be preserved previous to putting it up in packages, to a heavy pressure, substantially as and for the purpose herein specified."
>
> Specification : "This invention consists in exposing the meat to be preserved, before it is put up in packages, to a heavy pressure in such a manner that nearly all of the water not chemically combined with the meat and a large quantity of air contained between the various pieces and the pores of the same is expelled before the meat is put up in packages," * * * "The ordinary method of preserving meats for commercial purposes is substantially as follows : The meat being first subjected to the action of salt and saltpeter in the form of brine. * * * My process is executed as follows : After rendering the water of the meat temporarily proof against putrefaction by

"any of the ordinary processes, said water being the "only destroying agent, I remove a large percentage "of it, the remainder being fixed by the concentrated "antiseptics. I then subject a given quantity of the "meat to pressure in a box or cylinder until all air is "driven out and the space occupied by the meat agree. "with the size of the package it is intended to fills "When it is in its place the box is hermetically sealed."

This, it will be seen, is the re-issue specification. In the re-issue these words are added to the last quotation, "the air remaining in the same being expelled by the usual process in canning." These words neither help nor hurt the re-issue, as the proofs abundantly show that the words "hermetically sealed," as used in the preserving art, mean the usual treatment in finally closing the cans.

Hermetically sealing, as used in the art or trade of preserving food, is the process or method of heating the can or box in a bath for a certain time, then taking from the bath punching a hole in the can for the air to escape, then sealing the hole and reheating.

See abstract under title of "Proof of Hermetically Sealing as known to the trade," containing abstracts on this point, of the depositions of: E. S. Renwick, J. O. Rice, A. A. Libby, O. P. Price, G. N. Numsen, and G. A. Leland called by complainants; C. S. Merrill, G. Burnham, W. Underwood, F. Gibbie, C. Mitchell, J. Waltmeyer, and G. F. Lewis, called by the defendants. Also

Webster's Family Encyclopedia, 785.

Food, 32.

History of the Raw Materials of Commerce, 287.

Cooley's Cy. of Practical Receipts, 1047.

From the understanding of those skilled in the art, of the meaning of the words hermetically sealed, and the undoubtedly similar understanding of the Commissioner of Patents, we find the first claim fairly based on, and supported by, the original patent; and there is no step of the process named in the claim that is not named in the original specification, and in the same order in both.

The second claim is as follows:

> "2. As a new article of manufacture, the above "described compressed meat, preserved in solid form, "without disintegration or desiccation, in hermetically "sealed packages, substantially as herein set forth."

This is a claim for the product produced by the means used or process described, and it rests for its support on a question of fact as to whether the product is new, and not upon any question of re-issue law; for the law is fully settled, as will appear from the following quotations and citations:

PROCESS AND PRODUCT.

> "Proposition of the respondents is that both of "those patents are void for several reasons. Briefly "described, one of the patents is for a new product or "manufacture, and the other is for a new process or "method, by means of which the new product or "manufactured article is produced. Theory of the "respondents is that both are void. 1. Because the "subject matter of the respective claims was not sep- "arable. 2. Because each of the respective claims, "as they insist, is broader than the invention made by "the original patentee."
>
> "First objection, in the opinion of this court, is "wholly untenable. Legal effects of section 5 of the "Act of March 3, 1837, is to authorize the Patent Of- "fice, whenever a patent is properly returned for cor- "rection and re-issue under section 13 of the prior

"Act of Congress conferring such authority, to re-issue "the same in several patents for distinct and separate "parts of the thing patented, provided the patentee "shall desire it, and shall pay the additional sum or "sums required, as specified in the provision. (Stat. "at Large, p. 192.) No doubt can be entertained that "a new product or manufacture, and a new process or "method of producing the new article, are the proper "subjects of separate and distinct claims in an original "patent, and, if so, then it is equally clear that the "patentee, under that provision, upon a return of the "patent for correction and re-issue, and upon comply- "ing with the conditions therein specified, may have "several patents for the distinct and separate parts of "his invention.

Goodyear v. Providence Rubber Co., 2 Fish., 499, p. 510. Clifford, J.

This was affirmed on appeal in *Rubber Co. v. Goodyear*, 9 Wall., 788, and the court says:

"Patentable subjects, as defined by the patent law, "are 'any new and useful art, machine, manufacture, or "composition of matter, on any new and useful im- "provement on any art, machine, manufacture or "composition of matter.' A machine may be new, "and the product or manufacture proceeding from it "may be old. In that case the former would be pat- "entable and the latter not. The machine may be "substantially old and the product new. In that event "the latter, and not the former, would be patentable. "Both may be new, or both may be old. In the former "case, both would be patentable; in the latter, neither. "The same remarks apply to processes and their re- "sults. Patentability may exist as to either, neither, "or both, according to the fact of novelty, or the op- "posite."

9 Wall., p. 796.

On this matter see also:

Goodyear v. Wait, 3 Fish., 242, Nelson, J.

Penn Salt Co. v. Gugenheim, 3 Fish., 423, Grier. J.
Penn Salt Co. v. Thomas, 5 Fish., 148, McKennan, J.*

RE-ISSUE 6,370—W. J. WILSON.

The 1st claim of this patent is as follows :

> "The within described process for packing cooked "meats for transportation by compressing the same "into an air-tight package, so as to preserve th emeat "in its integrity, and retain all the natural juices and "nutritious qualities of the meat, substantially as set "forth."

This claim is the same as the original 1st claim except that the words "while heated with cooking," have been omitted. This change and the use of the word "preferably," in the re-issue specification have been changed by the disclaimers filed on this patent. The amending of a patent in this way by a disclaimer is considered further along, and the intention of the disclaimers was, and as we think their effect is, to restore the patent to its original condition.

The 2nd claim is as follows :

> "As a new article of merchandise cooked meat put up "in solid form, in its natural state, without disintegra "tion or desiccation, in hermetically sealed packages, "as set forth."

This claim is a verbatim copy of the original second, even to a wrong use of the word "merchandise," which should

*NOTE. After the consideration of this Marshall patent was printed, we were advised by counsel in immediate charge of the case, that not having proved any infringement of this patent, its consideration by the Court would not be urged at the hearing. As the authorities cited apply to the remaing patents, we have not amended the brief by taking out the matter relating to this particular patent. W. & B.

read "manufacture." This patent having been restored to its original form, it now involves no questions of re-issue law; it is therefore not commented on here, but in its completely amended form it will be considered under the head of Disclaimers.

Attention, however, is called for the second claim of this patent to the authorities cited for the second claim of the Marshall patent.

RE-ISSUE 7,923—J. A. WILSON.

The re-issue specification of this patent is a copy of the original, the only change in the entire document being the insertion of the words "so that," in the first clause of the second column, which words in no way change or alter the meaning of the specification.

The first and second claims of the re-issue are verbatim copies of the original first and second claims. The only question of re-issue law therefore to be considered in reference to this patent is whether the new third claim is justified by the original specification.

The 3rd claim is as follows:

> "As an improved article of manufacture, solid meat "compressed and secured within a pyramidal case or "can, so that said can forms a mold for the meat "and permits its discharge as a solid cake, substan- "tially as specified."

The law in reference to this class of claims is considered in reference to the second claim of the Marshall patent to which reference is made.

The article claimed is a cake of solid meat compressed and secured in a pyramidal can. These provisions or con-

ditions rest upon the following statements in the specification, to wit :—"In packing meats it is done by means of a plunger * * * a slight tap on the smaller head C will cause the *solidly packed meat* to slide out in one piece."

The use of a plunger clearly indicates that compression is in some degree to be had, and the condition of the contents being "solidly packed meat in one piece," substantially indicates that the meat is made into a solid cake by the described means, to wit :—A plunger passed through the opening in the large head. The condition of the claim "secured within a pyramidal case or can," is clearly stated in the description of the construction and form of the can. The further condition stated in the claim that the can forms a mold for the meat is substantially indicated in the specification, in the description of the form of the can, and in this statement of the specification. "The can is to be

"opened at the larger end at or near the shoulder *a*,
"* so that when the can is reversed again a slight
"tap on the smaller head C will cause the solidly
"packed meat to slide out in one piece."

This statement is also a foundation for the further condition of the claim that the form of the can permits a discharge of its contents "as a solid cake." All of the statements and combinations of this third claim are based upon the statements of the original specification, and on the drawing Fig. 2, where a can solidly filled to the limit of its capacity is shown. The degree of pressure required to form a solid cake is not stated in terms, and it is immaterial except that the pressure is to be sufficient to make the cake solid enough "to be readily sliced," and this is a substantially indicated limit if it should be material. By this comparison of this 3rd claim with the statements of the original

specification and with the Fig. 2 of the drawing, we find it to be a clear and correct statement of the product produced by the form of the can and the method of filling it described in the original specification and the claim, clear of any questions of re-issue law.

PRESUMPTIONS ARE IN THE FAVOR OF THE RE-ISSUES.

"The law required that the re-issue should be for the same invention as the original patent. It is to be presumed that the commissioner did his duty."

Klein v. Russell, 19 Wall., p. 466,

Smith v. Goodyear Dental V. Co., 3 Otto, p. 499.

The law—the proper original foundation for the re-issue claims—and the presumptions of law, being all with the complainants, we do not apprehend that the court will have any serious difficulty in finding, as a matter of fact and law applied to the re-issues, that they are all valid and lawful.

The difficulties which surround a patentee are well illustrated in the cases at bar. Wilson made improvements in the art of preserving meats, of great value and merit, as they resulted in creating an immense market at home for cattle, and a large foreign trade in meats put up under and in accordance with the Wilson inventions, resulting from the fact that such inventions produced a great reduction in price, so that Wilson has not only given his own country a benefit but has benefited the whole world.

Originally the improvements were described in accordance with what was then thought to be the inventions; subsequently, and after a more extended and better knowl-

edge of the art had been had, the improvements were more specifically pointed out by a re-issue of the patent, and afterward, in view of the knowledge of the art produced in the elaborate researches of this case, disclaimers were made in order to state and properly cover what Wilson had done in improving the art. Yet, notwithstanding all this, and the acknowledged immense benefit conferred by the Wilsons, the Circuit Court was unable to so locate the Wilson improvements as to give the patentees the benefit of them. This court may be, but it is hoped will not be, in the same predicament, but if at any time during the life of the patents it should be specifically made out what Wilson had done, and a sufficient description of the improvements should be found in his original specification, will this court say that the owners of the patents should not have the benefit of such improvements for the few remaining years of the patent, they suffering the penalty of having the patent shortened from seventeen to seven years or less.

DISCLAIMERS.

We have not attempted a full exposition of the law relating to the amendment of patents by disclaimer, only such parts thereof as are applicable to the facts of this case are here presented. As before stated two methods of amending patents are recognized, one by re-issue and one by disclaimer.

The statute relating to disclaimers is as follows:

> "Sec. 4,917. Whenever, through inadvertence, ac-
> "cident, or mistake, and without any fraudulent or
> "deceptive intention, a patentee has claimed more than
> "that of which he was the original or first inventor or
> "discoverer, his patent shall be valid for all that part
> "which is truly and justly his own, provided the same

"is a material or substantial part of the thing patented;
"and any such patentee, his heirs or assigns, whether
"of the whole or any sectional interest therein, may,
"on payment of the fee required by law, make dis-
"claimer of such parts of the thing patented as he shall
"not choose to claim or to hold by virtue of the patent
"or assignment, stating therein the extent of his in-
"terest in such patent. Such disclaimer shall be in
"writing, attested by one or more witnesses, and re-
"corded in the Patent Office; and it shall thereafter
"be considered as part of the original specification to
"the extent of the interest possessed by the claimant
"and by those claiming under him after the record
"thereof. But no such disclaimer shall affect any ac-
"tion pending at the time of its being filed, except
"so far as may relate to the question of unreasonable
"neglect or delay in filing it."

Revised Statutes of the U. S., p. 959.

It will be seen from the statute that a patent may be reduced in its claims or scope without the penalty of forfeiting any claims for prior infringement, the only penalty being a loss of costs.

The English and American cases are very similar.

In *Foxwell v. Bostock*, 4 De G., J. & S., 306; the court held, that the invention claimed might be reduced or diminished by a disclaimer, but that it could not be extended or enlarged.

In *Seed v. Higgins*, 8 H. of L. Cases, 550, it was held, that a reduction from the general application of a principle to a specific application thereof might be made by disclaimer.

The English practice in reference to the entry of disclaimers will be found in Re. Sharp, 641, and Re. Nickles, 650, 656, Webster's P. C.

The U. S. practice is regulated by the statute cited and only two or three points require consideration, the first of which is whether the specification can be amended under this section of the statute.

In *Silsby v. Foote* the disclaimer was held good, although it referred only to the subject matter of the patent and did not in terms refer to any words of the specification or claims. Its effect, however, was to limit the scope of the patent, and it affected by such limitation the construction to be put upon the claims, and it was therefore held to be good and valid.

The disclaimer was as follows:

> "Your petitioner, therefore, hereby enters his dis-
> "claimer to so much of said claim as extends the ap-
> "plication of the expansive and contracting power of
> "a metallic rod, by different degrees of heat, to any
> "other use or purpose than that of regulating the heat
> "of a stove, in which such rod shall be acted upon
> "directly by the heat of the stove, or the fire which it
> "contains; such disclaimer is to operate to the extent
> "of the interest in said letters patent vested in your
> "petitioner, who has paid ten dollars into the Treas-
> "ury of the United States, agreeably to the act of Con-
> "gress in that case made and provided.
>
> ELISHA FOOTE."

Silsby v. Foote, 14 How., p. 220.

In *Smith v. Nichols*, two disclaimers were filed to the same patent, and both appear to have been to the specification alone, and to act as limitations in construing the claims. They were filed after testimony had been taken, and were both held to be good. Their history and effect are stated as follows:

"On the 22d of January, 1870, the complainant filed "a disclaimer of any fabric in which the warp and "weft threads are so interwoven between the elastic "cords as to form strips of shirred cloth between and "by the contraction of the elastic cords—the warp "threads in his improved fabric being, as he declared, "only interwoven with the weft threads—for the pur- "pose of binding them tightly around the elastic cords. "On the 27th of May, 1872, he filed a disclaimer "of 'any fabric in which the weft threads are so in- "terwoven with the warp threads that the former are "not brought half way around each of said cords, so "as to grip them in such a way as not to permit said "elastic cords to slip between said weft threads, in case "said cords are cut crosswise or bias.'"

"The substance of the specification as limited by "the disclaimers may be thus summarized:" &c.

"It is objected that the disclaimers having been "made after the filing of the complainant's bill, cannot "avail him in this case. Upon a fair construction of the "seventh and ninth sections of the act of 1837, we think "they could be made as well after as before the com- "mencement of the suit. It would, in such case, be the "duty of the Court to see that the defendant was not "injuriously surprised, and to impose such terms as "right and justice might require. The question of "unreasonable delay would be open for the consideration "of the Court, and the complainant could recover no "costs. We see no reason for turning a party out of "court to renew the litigation after filing the disclaim- "er, thus subjecting both parties to the delay and "expense which must necessarily follow, and without "any benefit to either. We cannot believe such to "have been the intention of Congress.

Smith v. Nichols, 21 Wall., pp. 116, 117.

In *Schillinger v. Gunther*, it was held that new matter or matter appearing for the first time in a reissue, might be disclaimed, and that a specification might be modified by a disclaimer. The Court says:

"What he disclaimed was inserted by the reissue. It "did not exist in the original patent. But, for the "purpose of a disclaimer, what is disclaimed stood, "before it was disclaimed, as if there never had "been but one patent, and that the re-issued "patent. It was proper to correct by a disclaimer "the unlawful claim introduced by the re is- "sue. It is true that, strictly, section 4,917 contem- "plates only a disclaimer of some claim or part of a "claim, but, in connection with a disclaimer of a "claim or of a part of a claim, it is not improper to "eliminate or withdraw, by the same writing, the "parts of the body of the specification on which the "disclaimed claim or part of a claim is founded. The "disclaimer is none the less a disclaimer of a claim or "of a part of a claim, because, in addition, it disclaims "such parts of the body of the specification. The "disclaimer being a proper one in form and substance, "it is, by the statute, to be, after the filing, consid- "ered as a part of the original specification. The re- "issued specification is to be thereafter read as if the "disclaimer were incorporated in it."

Schillinger v. Gunther, 16 O. G., p. 906.

In *Seymour v. McCormick*, 19 How, 96: It was held to be a not "unreasonable delay" to wait for the Court to pass on the validity of the claim.

In *Aiken v. Doler*, 3 Fish., 197: It was held that a claim might be modified by a disclaimer from a claim for a needle and latch broadly, to a needle having a particular swell affecting the movement of the latch, as such modification limited the scope of the claim.

In *Taylor v. Archer*, 4 Fish., 499: A disclaimer was filed limiting the claim to a specific construction without changing or altering its words, which was held to be good and valid.

CONCLUSIONS.

From the Statute and the authorities it appears that disclaimers may be entered as follows:

1st. To the subject matter.

2d. To change a patent from a general to a specific application.

3d. To such parts of the specification alone as affect the construction of the claims.

4th. To parts of the specification and claims.

5th. To limit a claim to a specific construction without changing its wording.

6th. To limit devices to a specific construction, and

7th. To amend the patent generally so long as it operates as a limitation.

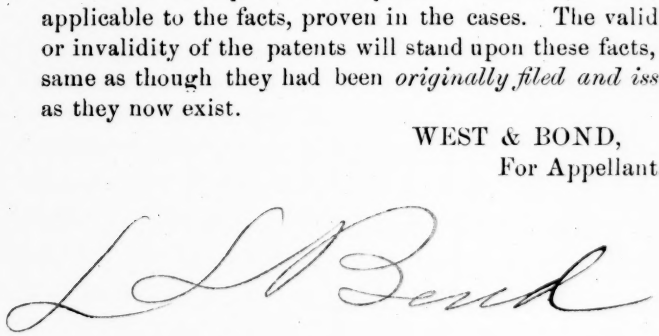
From this partial review of the authorities it will be seen that the disclaimers filed to the W. J. Wilson patent, come strictly within the law, and that the patent, so far as the law of disclaimers is concerned, is valid.

The application of the disclaimers themselves to the patent will not be difficult as they simply restore the re-issued patent to its original reading, and they in fact climinate all questions of the law of re-issues and of disclaimers from that patent. It now stands as it stood originally, or as though it had never been changed.

All of the patents appear to us to be free from any serious questions of re-issue law, and from doubts under the law of disclaimers. So far as these branches of the law are concerned they are believed to be valid patents.

It is not our province to present the facts, or the law applicable to the facts, proven in the cases. The validity, or invalidity of the patents will stand upon these facts, the same as though they had been *originally filed and issued* as they now exist.

WEST & BOND,
For Appellants.



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MAR 17 1882
JAMES H. MCKENNEY

IN THE

UNITED STATES SUPREME COURT,

OCTOBER TERM, A. D. 1881.

THE WILSON PACKING COMPANY, ARTHUR A. LIBBY, ARCHIBALD McNEILL AND CHARLES P. LIBBY, APPELLANTS, vs. CHICAGO PACKING & PROVISION COMPANY, B. P. HUTCHINSON, GEORGE W. HIGGINS, AUGUSTUS S. BURT, D. L. QUIRK, AND BENJ. F. MURPHY, APPELLEES.	In Equity.
SAME vs. THE ST. LOUIS BEEF CANNING COMPANY.	In Equity.
SAME vs. ROBERT D. HUNTER, ET AL.	In Equity.

ARGUMENT FOR APPELLEES.

By L. L. COBURN.

BEACH, BARNARD & CO., PRINTERS, 104 RANDOLPH ST., CHICAGO.

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vs.
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vs.
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ARGUMENT FOR APPELLEES.

By L. L. COBURN.

CHICAGO:
BEACH, BARNARD & CO., LEGAL PRINTERS, 104 RANDOLPH STREET.
1882.

STATEMENT OF CASE.

These three causes which are based upon the same Letters Patent of the United States, were tried in the court below together upon the same record and testimony, and decided together in the same opinion, in which Hon. THOMAS DRUMMOND and Hon. HENRY W. BLODGETT presiding together, found the equities for the defendants and decreed that the bills be dismissed at the complainants' costs. The complainants in the court below prayed an appeal to this Honorable Court, where it is also stipulated that the three causes may be heard together upon the same record and same evidence, so far as it applies to all of the cases, reserving, however, the point that appears in the testimony, that there was a difference in reference to the construction of the cans made by the different defendants.

APPELLANTS' PATENTS.

These cases were based upon three re-issued Letters Patent.

First. Re-issue Letters Patent No. 6,451, granted to William C. Marshall, May 25, 1875, for "Improvement in Process for Preserving Meats." The original patent was No. 43,516, and dated July 12th, 1864, and re-issued in two divisions; one division being for the process for preserving meats, and the other for the machine with which the meat was canned.

Second. Letters Patent Re-issue No. 6,570, dated April 6th, 1875, granted to William J. Wilson for "Improvement in Process for Preserving and Packing

Meats," to which two disclaimers were filed *pendante lite*, 1st, dated Oct. 16th, 1880; 2d. dated Oct. 26th, 1880. The original patent was No. 149,276, dated March, 31, 1874.

Third. Letters Patent Re-issue No. 7,923, dated October 23, 1877, for "Improvement in Sheet Metal Cans." The original patent was No. 161,848, dated April 6, 1875. (Application for re-issue filed Oct. 15, 1875, more than two years after the date of original patent.)

SUBJECT MATTER OF THE APPELLANTS' PATENTS.

These patents all relate to the preservation of meat in air-tight packages. The art of preserving alimentary substances in a form suitable for transportation, and in a condition suitable for human food, is perhaps the most important art connected with the subsistance of the human family. The processes connected with the preservation of any one kind of food are not only of great importance to the industries of the world, but affect directly the subsistance of every human being. The term "meat," as used in the patents of these appellants is used without limitation, and relates to all animal substances that are used for food.

The processes described in these patents must, in terms, not only be new as applied to the treatment of any kind of meat, but also new in application to the treatment of any alimentary substance to preserve it for food. Meat has always been salted or treated with some kind of antiseptic to preserve it, and it has been a common practice for all time to dry meat to preserve it for food. One of the most important discoveries relating to the preservation of food, was that made by Appert, a French scientist,

in 1810. He first described the process of hermetically sealing vessels containing putrescible substances, and then subjecting the vessel to a boiling heat, thus raising the temperature of the can or vessel to a high heat after it was filled and sealed up. The present accepted theory in reference to the preservation of food is, that the atmosphere is full of minute living organisms that lodge upon and permeate all putrescible substances, and unless they are destroyed, they multiply and increase rapidly, and soon cause putrefaction to take place. Appert, by his process, destroyed all these germs of putrefaction which might be in the can, either within the alimentary substance which he placed in the can, or in the atmosphere surrounding it in the can, by submitting the sealed up can to a high degree of heat; this process, called the Appert process, was improved by puncturing the can or vessel after it had been sealed up and highly heated to allow the expanded steam and air in the can to escape, and then sealing the puncture before any air could pass into the can. This well known Appert process for destroying the germs of putrefaction in the can or vessel after it was sealed up, has been used throughout the civilized world for more than half a century, not only in canning establishments in preparing food for shipment from one climate to another, but it has also been practiced in almost every household to preserve food for domestic use.

No one will contend that it would be a novel process to fill a can or a glass jar with one well known kind of food in place of another kind, and then submit the can or jar after being sealed, to the Appert process, just as it had been the practice to do before; the only difference being the matter of choice as to the kind of fruit or vegetable or meat placed in the can. The patent law certainly is not

broad enough in its statement as to what can be patented, to enable one to acquire the exclusive right to can some well known article of food by a well known process, simply because he was the first to can that particular article of food, if he has simply exercised his choice as to what article of food he will select, using well known processes, producing no new article, and in no way changing either the process which is used, or the article which he places in the can. The same rule must apply to different kinds of food. If what is known as the Appert process, which is admitted has been in use since 1810, to expel air from hermetically sealed cans for the purpose of preserving their contents in all climates, through all seasons, is used, there can be no invention in placing meat in the can instead of vegetables; there can be no invention in placing one kind of vegetables in the can instead of another kind, or one kind of meat in the can instead of another kind. The result obtained by the Appert process upon the contents of the can, is to destroy the germs of putrefaction, which may be either in the alimentary substance in the can, or in the air in the can, so that the alimentary substance (whatever it may be) will be preserved in the condition that it was in when it was placed in the can. If boiled, fresh beef is placed in the can, then processed by what is known as the Appert process, for the purpose of destroying the germs of putrefaction, or bacteria, which may be in the meat or in the air in the can, the boiled, fresh meat will be preserved, and when it is removed from the can it will be boiled, fresh meat. The person canning that meat has invented no new process, nor has he produced any new product or article of manufacture. If roast, fresh meat is placed in the can, and the can is then processed by what is known as the Appert process, to kill the germs of putre-

faction in the meat and in the air in the can, when the can is opened, roast fresh meat is taken from the can. The person in selecting roast fresh meat instead of boiled meat, has invented no new process, nor has he produced any new product or article of manufacture. And so the person canning might select veal or mutton, beef's tongue, chicken, fish, head cheese, lobster meat, or he might select any fruit or vegetable; there could be no invention in simply selecting the article of food which he might choose to place in the can; neither could there be any invention in placing the article in the cans in any one state or condition instead of in another state or condition: such as placing a sweet pickle in a can instead of a sour pickle, or placing cooked meat in the can instead of raw meat. It would be difficult, also, to conceive how there could be any invention in placing in the can, meat seasoned with one kind of condiment instead of another kind: meat salted instead of meat unsalted; the condiment would have the same effect upon the product, whether the product should be taken out of the can in one climate or another, and the same effect, whether the can should be processed to expel the air, or not processed.

Marshall Patent.

The original Marshall patent described a press of a particular construction adapted to press meat into cakes or solid parcels, and the press was adapted to admit of the ready transfer of the compressed cake of meat into a package of the exact form and configuration of the compressed cake of meat; the purpose being to have the package completely and wholly filled with the solid cake of meat. The package was then sealed up hermetically. There was no description of the form of the package

broad enough in its statement as to what can be patented, to enable one to acquire the exclusive right to can some well known article of food by a well known process, simply because he was the first to can that particular article of food, if he has simply exercised his choice as to what article of food he will select, using well known processes, producing no new article, and in no way changing either the process which is used, or the article which he places in the can. The same rule must apply to different kinds of food. If what is known as the Appert process, which is admitted has been in use since 1810, to expel air from hermetically sealed cans for the purpose of preserving their contents in all climates, through all seasons, is used, there can be no invention in placing meat in the can instead of vegetables; there can be no invention in placing one kind of vegetables in the can instead of another kind, or one kind of meat in the can instead of another kind. The result obtained by the Appert process upon the contents of the can, is to destroy the germs of putrefaction, which may be either in the alimentary substance in the can, or in the air in the can, so that the alimentary substance (whatever it may be) will be preserved in the condition that it was in when it was placed in the can. If boiled, fresh beef is placed in the can, then processed by what is known as the Appert process, for the purpose of destroying the germs of putrefaction, or bacteria, which may be in the meat or in the air in the can, the boiled, fresh meat will be preserved, and when it is removed from the can it will be boiled, fresh meat. The person canning that meat has invented no new process, nor has he produced any new product or article of manufacture. If roast, fresh meat is placed in the can, and the can is then processed by what is known as the Appert process, to kill the germs of putre-

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which was to receive the meat, further than that it was to be of the same shape as the box in which the meat was pressed, so that the package would form a complete mould for the cake of meat, and be completely filled with the solid cake of meat; the purpose being to press the meat in the press, instead of pressing it in the package, that the pressing might not injure the package, and a package could be used, not having sufficient strength to withstand the pressure given to the meat.

In the re-issue of the Marshall patent in its two divisions, one division was for the press, the other division (and the one set up in these bills of complaint) was for the process, which consisted of taking the meat, which was first treated by any antiseptic, or any other well known way, to remove the water and liquid portion, and then pressing it in a press into cakes, and then putting it into the package of the same form and size of the compressed cake of meat, and then sealing it up and submitting the package to the well known process for expelling the air. This processing to expel the air was added to the re-issue patent, and was clearly new matter. This patent, however, was not relied upon by the appellants in the court below. The court below disposed of this Marshall patent in the following language:

"The Marshall patent, although set forth in the pleadings, is not relied on in the argument, and need not be further considered as an independent ground of relief."

The William J. Wilson Patent.

In considering the William J. Wilson patent, I shall first consider it in the condition that the re-issue and disclaimers placed it. The original patent stated: "In carrying "out my invention, the meat is first cooked thoroughly at "a temperature of 212 Fahrenheit, so that all bone and "gristle can be removed and yet the meat retain its nat- "ural grain and integrity; the meat is then in a proper "condition for eating, and is wholesome and palatable. A "measured quantity of this cooked meat is then, while "yet warm with cooking, placed by any suitable appar- "atus in a previously prepared box or case with sufficient "force to remove the air and all superfluous moisture, and "make the meat form a solid cake; the box or case is then "closed air-tight upon the meat." The re-issue of this patent differed from the original patent by inserting before the words "while yet warm with cooking" the word "preferably," and the first claim of the original patent was changed in the re-issue by leaving out the words "while heated with cooking." The process was changed by omitting the requirements that the cooked meat should be pressed into the can while warm from cooking, leaving it optional to press it in the can or package either while warm or cold. The first disclaimer was filed for the purpose of eliminating from the re-issue the word "preferably," and reinstating in the first claim of the re-issue the words "while heated with cooking." The following language is used in the disclaimer: "Disclaim the word "'preferably' in said patent before the words 'while yet "warm with cooking,' and also any process described and "claimed in said specifications or claims in which meat is "described or claimed to be compressed into the package "in any other condition than a warm or heated condition.

"so that the claims of the said re-issue will refer only to "a process in which the meat is compressed into the pack- "ages in a warm or heated condition, and only to a pro- "cess for packing cooked meats for transportation by com- "pressing the same while heated with cooking into air- "tight packages, so as to preserve the meat in its integ- "rity and retain all its natural juices and nutritious quali- "ties, and so that the claims of said re-issue will refer only "to a new article of manufacture—cooked meat put up "while warm with cooking, in its natural state—without "disintegration or dessiccation, in hermetically-sealed "packages."

In the second disclaimer, it was stated "that the patent "had been made to include more than that of which the "said William J. Wilson is the original or first inventor, "namely: to include the cooking of said meat by other "means than by boiling the same in water," and the dis- claimer reads as follows: "jointly and severally hereby "enter a disclaimer to interpretation or legal construction "to said words broader than is conveyed by the words "'the meat is first cooked thoroughly by boiling it in "water so that all the bone and gristle can be removed "and the meat yet retain its natural grain and integrity;'" and again also in the same manner enter their disclaimer, "to any signification or meaning of the claim of said "re-issue broader than is conveyed by the following "language, namely: 'The within described process of "packing for transportation, meats cooked by boiling, by "compressing the same, while heated with cooking, into "an air-tight package, so as to preserve the meat in its "integrity and retain the natural juices and nutritious "qualities of the same. Second. As a new article of "manufacture, meat cooked by boiling, put up while

"heated with cooking, so as to form a solid cake in the "package in its natural state, without disintegration or "dessication, in hermetically sealed packages, as set "forth."

The court below, in construing the William J. Wilson patent, used the following language: "Waiving the objec- "tions which have been made to the validity of these "disclaimers, we may now state what the invention of the "William J. Wilson patent is. The meat is to be first "thoroughly cooked by boiling it in water, so that all the "bone and gristle can be removed and the meat yet "retain its natural grain and integrity. While yet warm "with cooking, it must, by some suitable apparatus, be "placed in a box or case, previously prepared, with suf- "ficient force to remove the air and all superfluous "moisture, and make the meat form a solid cake. The "box or case is then to be closed air-tight upon the meat: "so that the invention contains of the following elements:

"1st. Thoroughly cooking the meat by boiling it in "water, removing the bone and gristle.

"2d. Placing it while, yet warm with cooking, into a "box or case, and pressing it by some suitable apparatus "with sufficient force to remove the air and all superfluous "moisture, and make the meat form a solid cake.

"3d. Closing the box or case air-tight upon the meat.

"It will thus be observed that the first requisite is, that "the meat must be first thoroughly cooked by boiling it "in water, that mode of cooking called 'stewing' not "being necessarily excluded, unless the words declaring "that 'the meat yet retains its natural grain and integrity' "have that effect. The patent limits the cooking to this "particular mode, baking, roasting and steaming being "excluded as modes of cooking meat.

"After the bone and gristle are removed, there is no "description given of any particular manner in which the "meat is to be treated before it is put into the box or case, "unless the use of the words that 'it is then wholesome "and palatable' has that effect.

"And although the evidence shows that all of the meat "put up by the complainants, and which has entered so ex- "tensively into the markets of the country for sale, is "corned meat, that is not a part of the patent, and fresh "meat without anti-septics of any kind, if thoroughly "cooked by boiling in water, with the bone and gristle "removed, is, while yet warm with cooking, put into a box "or case closed air-tight, would be within the description "of the patent. Neither is anything said of the extent of "the pressure to which the meat is to be subjected when "placed in the box or case, except that it must be with "sufficient force to remove the air and all superfluous "moisture, so that the meat will form a solid cake. Nor "is the degree of warmth named which must exist when "the meat is put into the box or case; neither is any de- "scription given of the manner in which the box or case "is to be closed air-tight upon the meat."

* * * * * * * * * *

"It should be stated that in the original as well as in the "re-issue patent of William J. Wilson, it seems to be im- "plied by the second claim, which is made in each, that "the box or case must be *hermetically* sealed. Some criti- "cism has been made upon the use of this word. We "do not understand it to mean the same as if it were em- "ployed in describing anything as hermetically sealed in "a laboratory, but only that the package should be so "sealed as to exclude the passage of air into or out of the "box or case. The patentee says that this box or case

"may be made of wood or metal, or both combined, of "any suitable form or shape, and of any desired dimen- "sions. It is, perhaps, unnecessary for us to inquire, as "all the parties in this case use metal, whether or not the "box or case could possibly be made of wood, or whether "in order to accomplish the object which the patentee "had in view it must always be made of metal.

"We will therefore direct our attention in the first "place to the question whether or not, what William J. "Wilson describes in his specifications as just stated, was "the proper subject of a patent. The cooking of meat "thoroughly by boiling it in water, so that the bone "and gristle can be removed, has always been known."

I have quoted the language of the court below thus at length, because it would probably be impossible for me to state more fairly the contents of the William J. Wilson patent in better language than that used by the court. There certainly can be no exception taken on the part of appellants to this analysis of the William J. Wilson patent, nor to the last clause of the quotation, because every one knows that the cooking of meat thoroughly, by boiling it in water so that the bone and gristle can be removed, has always been done, and this was admitted in the argument in the court below. There could be nothing left, then, upon which to base any novelty in the William J. Wilson process, excepting the selection of meat that had been boiled thoroughly to press in his package, instead of taking the kind of meat which Marshall pressed in his package, excepting the limitation that the meat must be pressed into the can while yet warm from cooking. Marshall did not state whether he pressed his meat while in a warm state or a cold state. There is no intimation in the William J. Wilson patent that any material

or substantial effect would be produced upon the meat, by pressing it into the can so as to remove therefrom the air and superfluous moisture while in a warm state; nor does he state how warm the meat must be.

The second claim of the William J. Wilson patent, as modified by the second disclaimer, is for a new manufacture or product. If meat, thoroughly cooked by boiling, and separated from the bone and gristle, was an old and well-known product, it certainly could not change its character and convert it into a new article of manufacture or product, by simply pressing it into a package while yet warm from cooking so as to express the superfluous moisture and air from the package, and then seal up the package. The product is boiled fresh meat pressed into a can, and sealed up; and when it is taken from the can, it is boiled fresh meat.

Counsel for appellant summed up this William J. Wilson patent as follows: "First, a means for more perfectly preserving meat than has ever been contrived, discovered or practiced before; and, second, an article which is a product of that process, cooked in a form to which the palate is accustomed."

This form of cooking to which the palate is accustomed is boiled fresh meat. If it was a new product, it must necessarily be something to which the palate is unaccustomed. The legal proposition upon which the appellants' counsel attempt to save this claim, is stated as follows: "The process being new, as I have endeavored to establish, it follows as a necessity that the product is a new thing."

The contradiction contained in these two statements is apparent. It is apparent that the product is not a new

product, but is one to which the palate is accustomed. The proposition which they state as a legal proposition is erroneous. Nothing is better established by decisions of this court than that an old product cannot be patented as a new article of merchandise or manufacture, even though it be produced by a new process. The cases cited by appellants' counsel and the language quoted, go to show that where the process is new and the article produced, when claimed in connection with the process, must be a new article and be inseparable from the process. When the process adheres in the article after it is made, so that upon inspection of the product it is manifest that the process must have been employed, and the article is a new manufacture, it can be claimed when made by the new process. If the article is old it cannot be patented as a new article of manufacture, although it may be produced by a new process.

In *American Wood-Paper Company* v. *Fibre Disintegrating Company*, 23d Wallace, page 593, Justice Strong, delivering the opinion of the court, says:

"If, then, the Watt & Burgess patent for a product is "sustainable, it must be because the product claimed, "namely, 'a pulp suitable for the manufacture of paper, "made from wood or other vegetable substances,' was "unknown prior to their alleged invention. But we think "it is shown satisfactorily that it had been produced and "used in the manufacture of paper long before 1853. "* * * * Whether a slight difference in the degree "of purity of an article produced by several processes "justifies denominating the products different manufac-"tures, so that different patents may be obtained for each, "may well be doubted, and it is not necessary to decide. "The product of the complainant's patent is a pulp suit-

"able for the manufacture of paper, and, confessedly, to "make white paper it requires bleaching. The pulp "which had been obtained by others in large quantities "from rags and from straw, wood and other vegetable "substances to a lesser extent, was undeniably also cellu- "lose, suitable for manufacturing paper, and, so far as "appears, equally suitable. The substance of the pro- "ducts, thererefore, was the same, and so were their "uses."

Again the court said:

"It is quite obvious that a manufacture or a product "of a process may be no novelty, while, at the same time, "the process or agency by which it is produced may be "both new and useful."

Rubber Company v. *Goodyear*, 9th Wallace, 788.

Justice SWAYNE, in reading the opinion of the court, said:

"Patentable subjects, as defined by the patent law, are "'any new and useful art, machine, manufacture or com- "position of matter, or any new and useful improvement "on any art, machine, manufacture, or composition of "matter.' A machine may be new, and the product or "manufacture proceeding from it may be old; in that case "the former would be patentable, and the latter not. The "machine may be substantially old, and the product new: "in that event the latter and not the former would be "patentable. Both may be new or both may be old; in "the former case both would be patentable; in the latter "neither. The same remarks apply to processes and "their results. Patentability may exist as to either, neither "or both, according to the fact of novelty or the opposite.

"The patentability of the issuing of a patent as to one in "no wise affects the rights of the inventor or discoverer "in respect to the other. They are wholly disconnected "and independent facts. Such is the sound and necessary "construction of the statute."

Wooster v. *Calhoun*, 11th Blatchford, 215, WOODRUFF, Justice. This case was for a patent for the manufacture of ruffles. The judge said: "If it possessed greater "beauty, greater evenness and regularity of its plaits "than the ruffling made by hand, that was due to the ma- "chinery by which it was made, and not to the invention "of the maker in suggesting any novelty, but such as "pertains to quality or degree of perfection in what was "old. If it be conceded that such evenness, regularity "of plaits, beauty and finish, exceeding anything which "it is possible to produce by hand, made it a patentable "article of manufacture, notwithstanding it is, in other re- "spects, like ruffling made before, still it was not new in "such sense as to be patentable. * * * * The mis- "take of the complainant is, in confounding a process or "a machine for performing at one operation what before "required more than one, with the product of the opera- "tion. The former may be patentable; the latter is not."

There is no decision holding that a product is patentable, as a new manufacture, unless the product itself be new. It cannot be made patentable because it is manufactured by a new process or a new machine. If it be made by a new process, the process must adhere to the product in such a way as to make the product new. Meat thoroughly cooked by boiling in water and separated from the bone and gristle is not a new product. It is not made a new product by pressing it into a package and sealing it up air-tight; it is simply thoroughly cooked,

boiled meat. Wilson produced no new article of manufacture, and the process in this case has no patentable invention or novelty that is not described in the Marshall patent. The purpose of each patent is precisely the same; both were seeking to preserve meat in a condensed form, suitable for transportation, and so that it would keep for a long period in any climate. The *condition* in which the meat was packed or pressed into the package was the only difference between the two patents. Marshall used more general terms in the description of the kind of meat that he pressed into his packages than Mr. Wilson did. Marshall says: "I then subject a given quantity of the "meat to pressure in a suitable mold, and subsequently in "the packages or boxes intended to contain the same until "the air is driven out and the space occupied by the meat "agrees with the size of the package or box it is intended "to fill. When the compressed meat is in its place the "package or box is hermetically sealed."

Mr. Marshall says that he uses the meat "after it has "been subjected to a partial preserving process." Wilson says: "A measured quantity of this cooked meat is "then, while yet warm with cooking, placed by any "suitable apparatus into a previously prepared box or "case, with sufficient force to remove the air and all superfluous moisture, and make the meat form a solid cake. "The box or case is then closed air-tight upon the meat."

Marshall takes meat that has been subjected to a partial preserving process. Boiling meat in water is a partial preserving process, and is included within Marshall's description.

John A. Wilson Patent.

John A. Wilson, in his original patent, which was for, "Improvement in sheet-metal cans," describes the particular construction of the can as follows: "A, represents "the body of the can, made in the form of a truncated "pyramid, with rounded corners and of any desired num- "ber of sides, though I prefer to make them with four "sides. Both ends of the body are made slightly flaring, "as shown, so as to form interior shoulders or offset ends "*a*, against which the heads B and C are to rest. The "edges of these heads are turned outward, as shown at "*b*, and the flaring edge *d* of the end of the can is turned "inward over the flange *b*, and the three thicknesses of "metal pressed together by machinery, with or without "solder, so as to make air-tight joints." The claims read as follows:

"1. The can for packing food, hermetically sealed and "constructed of pyramidal form, with rounded corners and "offset ends to support the heads, said heads being se- "cured as shown and described.

"2. A perforated plate D, in combination with the "head B or C, provided with protector *h*, substantially "as and for the purpose set forth."

The first claim was for a peculiarly constructed can of a certain form, with rounded corners, with offset ends, and the heads secured on these offset ends as described. The second claim consisted in placing a little protector under the vent-hole where the cans were vented when being processed. The mechanism of the second claim has always been used, and the complainants stipulated early in their testimony that it was old. There is no proof that the defendants ever used cans with offest ends to support the heads.

In the re-issue of this John A. Wilson patent, the following addditional claim is found:

" 3. As an improved article of manufacture, solid " meat compressed and secured within a pyramidal case " or can, so that said can forms a mold for the meat, and " permits it to form a solid cake as specified."

The Marshall patent and the William J. Wilson patent describe a package in which they put their meat, and the package in each instance was to be filled with meat; the package was to form a mold for the meat in the sense that it was filled solidly full of compressed meat, the same as was contemplated in the John A. Wilson patent. The only possible novelty in the John A. Wilson patent that is not found in the Marshall patent and the William J. Wilson patent, is the special construction of his can. The appellants have made no claims against the defendants, only on account of the 3d claim in the re-issue patent. If the addition of this claim to the re-issue is warranted by the original patent, which is denied, the claim is invalid for want of novelty. It is for an improved article of manufacture; that new article of manufacture is, solid meat pressed and secured within a pyramidal case or can. There is no new property or quality in this meat. Meat has been solidly compressed in a can before. There is no pretence or claim in this patent that John A. Wilson was the first to make a pyramidal can. There is no new property given either to the meat or to the can, from the fact that the meat was compressed in a pyramidal can. The meat would be solid compressed meat whatever shape the can had, and the pyramidal can would discharge its contents equally well, whether it contained meat or something else. There certainly is no invention in putting

meat into pyramidal cans, if other articles had been put into pyramidal cans before.

The Marshall patent states that the meat is compressed into a solid cake of the form of the package, and then pressed into the package and sealed up, although he does not describe the form of the package he contemplates using, or any of the known forms of packages. He could have used a pyramidal package or a conical package, or any form of package, into which he could have pressed his solid cake of meat. It was certainly contemplated to use a form of package into which the cake of compressed meat could be pressed, and the most convenient form would have been a package larger at one end than at the other; and if the meat could have been put into the package it could be removed from the package in a solid cake; the package would also form a mold for the meat; the meat when in the package would be solid meat, compressed and secured within the package or can, so that said package would form a mold for the meat, and permit it to form a solid cake.

It would also have been equally within the scope of the William J. Wilson patent to have packed his meat in a conical or pyramidal package, providing such packages were known. William J. Wilson places no limitation in his patent in reference to the form of the package. William J. Wilson was not limited by his patent to the use of a square package. One practicing the William J. Wilson patent could use a conical package or a pyramidal package, or a package of any other shape or form which he might think best to adopt. His meat, however, was to be pressed within the package so as to remove the superflous moisture and air from the package, thus making it solidly full of compressed meat, and if he had used a

pyramidal package, he would have had "solid meat com-
" pressed and secured within a pyramidal case or can so
" that said can would form a mold for the meat, and per-
" mit it to form a solid cake as specified." So far as the purpose or result to be obtained by the shape of the pyramidal can is concerned, as specified in this third claim of the John A. Wilson re-issue patent, it would be just the same in all respects by the use of a tapering can of any kind.

The court below, in commenting on this patent, used the following language: "We may also add to this
" from our common knowledge, glasses and molds used
" by housekeepers in domestic life for preserving jellies,
" boned-turkey, headcheese, etc., which were all, from the
" very necessity of the uses to which they were put, more or
" less flaring, conical or pyramidal in shape, and made so,
" presumably for the purpose of turning out or discharg-
" ing the contents in a solid cake. If, therefore, there
" was any occasion at the time this patentee entered the
" field of improvement to use a pyramidal or conical
" shaped can or case, there was no need of calling in the
" aid of inventive genius to secure or contrive its con-
" struction. Those who wanted such a can or case had
" only to take the forms then in general use and adapt
" them, by mere mechanical changes, to the purposes for
" which they were designed. With these conical and
" pyramidal cans, well known and described in the art of
" preserving food, there was not only no room, but abso-
" lutely no need for invention in applying them to the pur-
" poses of preserving cooked meats. There is nothing
" in the proofs showing, or tending to show, that cooked
" meats required any different shaped cans to contain or
" preserve them than do other alimentary substances.

" The only advantage gained by this shape suggested in " the patent is, that the solidly-packed meat can be more " compactly turned out of this form of can in a cake so " as to be readily sliced, but it could be equally well " turned out of a conical can. In fact, a conical or " pyramid-shaped or flaring can would seem naturally to " suggest this from kindred uses in domestic life almost " as part of the idea or suggestion of packing meats " solidly in a can for preservation."

Summary.

In brief, the Marshall patent consisted of packing meat which had been first treated so as to partially preserve it, and pressing it into cans or packages so that the package would be solidly full of pressed meat, and sealing up the package hermetically.

The William J. Wilson patent was limited by his disclaimers to taking meat and cooking it in a particular way, namely, by boiling thoroughly in water, and pressing it into cans while yet warm from cooking, so as to remove the superfluous moisture and air, thus filling the can solidly full and sealing it up hermetically. This patent is limited also to fresh meat, because the inventor says that he *first* takes meat and cooks it thoroughly by boiling it in water, and in his claim he says: " and retain all the nat- " ural juices and nutritious qualities."

The John A. Wilson patent is for solidly compressed meats pressed in a pyramidal can with rounded corners. There is no difference between these patents so far as the condition of the meat is concerned after it is pressed into the package, so far as the solidity and compactness of the meat is concerned. There is no difference between them

so far as the process of packing is concerned, excepting in this—that the Marshall patent calls for any meat that has been partially preserved or cured, while the William J. Wilson patent is limited to taking meat that is partially cured in a certain way and that a well known way. None of the patents describe a new product. They all have meat prepared in a well known way.

The third claim of the John A. Wilson patent limits the article—solidly compressed meat—to a can of an old and well known shape, while the other two patents do not limit their packages to any particular shape. There is nothing to show that the meat which John A. Wilson placed in his pyramidal can receives any different or new property or quality because of its being placed in a pyramidal can. It is evident that there is no new patentable process described in either of these three patents, nor is there any new product produced, provided however, first, they were not the first to press meat solidly into packages and seal it up air-tight, which is the substance of the Marshall patent; second, the first to cook meat thoroughly by boiling it in water to remove it from the bone and gristle, which was the only new feature in the William J. Wilson patent not specifically described in the Marshall patent; and third, to make a pyramidal or conical can, which was the only new feature in the John A. Wilson patent not specifically described in the other two.

The Prior State of the Art.

It was old to press meat and seal it up hermetically in packages, both in a raw state and in a partially cooked state.

English patent issued to Jean Worthley, February 20, 1855, page 90, transcript of defendant's record "A."

"The invention consists of a means for preserving meat. "Salt and vinegar is put upon the meat and then it is sub- "jected to pressure to force out all the blood or serous "matter, or in place of being pressed, the meat may "be imperfectly cooked before packing. The meat is "then packed in casks, the casks sealed up so as to ex- "clude air."

The English patent, No. 2,422, granted to J. B. S. Martin DeLignac, October 30, 1855, page 94, transcript of defendant's record "A."

"Improved mode of preserving animal substances. "The preservation of animal substatces is thereby effected, "and at the same time the volume of the product is re- "duced by compressing it in boxes made sufficiently strong "to resist the strain to which they will be submitted. It "is preferable to make these boxes of a cylindrical form, "and when the substance is placed therein, they should "be immediately closed and submitted to such a temper- "ature as will prevent ulterior spontaneous change or de- "terioration."

Again he says:

"The meat is subjected in stoves or heated air cham- "bers, to a current of air heated to a temperature of from "25 degrees to 30 degrees centigrade, until by the con- "tinuous and energetic action of the current of hot air, "the meat has lost about 50 per cent. of its weight. It "is to be then powerfully compressed in cylindrical tin "boxes in such a manner that a vessel capable of holding "a quart shall receive 8 rations. * * * The cover "is then to be soldered on and the box and its contents "are submitted in a cooking vessel to a temperature suf- "ficiently high to produce steam in the box. * *

"* * * * The meat thus compressed and "preserved, may either be consumed directly on being "taken from the air-tight box, or may be immersed in "cold water and made to boil, thereby producing excel- "lent broth or soup, and good boiled meat."

Weismann Belgium Patent, May 24th, 1854, page 1017, transcript of defendant's record "A."

The inventor says:

"To preserve fresh meats when they are to be kept for "a long time, or when they are to serve for provisioning "ships or armies, it will be necessary to have substantial "recipients, easy to transport, and capable of being her- "metically closed; the best will be of conical or cylin- "drical form, of tin iron plate, or of any other suitable "material for this purpose." * * * * Again he says: "When the meat shall be intended to be preserved for a "very long time, as, for instance, for the provisioning of "ships departing on long voyages, the pieces will first be "heated by steam. This heating is intended to coagulate "the albuminous substances. When we deal with large "quantities, this operation can take place in a special ap- "paratus, which shall contain the meat, and into which "we admit steam from a boiler. We can make use of "the larger recipient, whose bottom shall be filled with a "sufficient quantity of water, which shall be made to boil. "* * * * The meat should be much pressed, and "made very compact. * * * * By means of the "recipient constructed as has been described, and its fill- "ing in the manner indicated, we solve the problem of "preserving fresh meat without alteration, and still pos- "sessed of its natural taste and nutritious properties. "The can is then sealed hermetically."

This patent clearly describes a conical tin can, into which cooked meat is solidly pressed, the meat being cooked by steam. The patent also provides for canning the meat without cooking.

The Lyman American patent, June 22, 1869, page 129, transcript of defendant's record "A."

Lyman, in his specification, speaks of the ordinary mode of preserving meat in cans, stewed, boiled or roasted, but says that his method is an improvement, on account of the way in which he roasts his meat, which concentrates the juices in the meat. He says:

"The meat is roasted by means of a current of dry, "warm air, which passes from the heater through the "meat chamber; * * * * and then pack the best "pieces in this reduced meat, and press it all into a com- "pact mass in the can, the interstices being filled with the "reduced meat firmly pressed in so as to expel the air. "* * * * Sometimes I grind the whole of the meat, "and pack the can with it, compressing it into a solid "mass, then heat and seal it up from the air, and reheat "it to combine any free oxygen that may possibly be left "in the can. In the preparation of the meat, preliminary "to packing it in cans, it should be deprived of the here- "inbefore mentioned products of the normal waste. Beef, "mutton, fish or other meat can readily be treated in this "manner."

One of his claims reads as follows:

"As a new manufacture, concentrated roast beef, mut- "ton, fish or other meat, prepared and preserved substan- "tially as specified."

De Kermoal English patent, 1854, page 88, transcript of defendant's record "A." "Improved System for

"Transporting and Preserving Animal and other Ali-
"mentary Substances."

He says: "The bones are removed from the flesh or
"meat, which is immersed for a few seconds in boiling
"water, and is then placed in boilers already containing
"water, in a state of ebullition, together with a suitable
"proportion of vegetables. * * * * *
"The meat is only partially cooked in the second boilers,
"and it is then taken out and cut into pieces on an inclined
"table and placed in tin boxes, after having been im-
"mersed in a preservative mixture of vinegar and salt and
"water. After the meat is introduced into the boxes,
"with or without the vegetables with which it had been
"boiled, the end or bottom of each box is filled up through
"a hole in the centre, which is afterwards closed her-
"metically by soldering a disk over it."

This patent clearly describes boiled meat which is packed in the can either with the vegetables or without them. The same process is described here as in the William J. Wilson patent, excepting that he does not say how full he packs the can. It is a fair inference that he fills the can solidly full of meat, there being no reason why he should not.

Martin de Lignac, French patent, April 7, 1855, page 101. Transcript of defendant's record "A." "For
"preserving meats."

He says: "The bones, sinews and fat of the meat
"being removed, it is cut in strips of two or three centi-
"metres, and put on movable trays and heated in an oven
"to a temperature of 30 to 40 degrees centigrade. When
"evaporation has reduced the weight of the meat to one
"half, it is seasoned, placed in a tin box, and compressed

"with a hand-press until about two pounds of the meat, "dried as above are contained in a can of one liter "(quart); the can is then closed hermetically and cooked "in a digester during a certain time, varying according "to the size of the can and the kind of preserved meat."

The New American Cyclopedia, published by D. Appleton & Co., in New York, in 1861, in describing the method for preserving animal food, has the following: "6. By cooking to coagulate the albumen and then "enclosing in air-tight cans, with exclusion of air, after "the manner of canning fruits." (See p. 111, transcript of defendant's record "A."

The London Herald of June 1st, 1865 (see p. 112. transcript of defendant's record "A" p. 116), has the following: "The second method, that of preserving "cooked meats, &c., is one that cannot be spoken too "highly of. The process has borne the test of experience "for years, and cases have been carried into every lati- "tude; they have neither burst from the heat of the torrid "zone, nor collapsed with the cold of eternal snows; and "whenever and wherever the contents have been required "they have been valuable. This offers an admirable "method of preserving, and at the same time cooking, "food for import and victualing. The food can be as "varied in its form and combination as heart can desire, "and the only drawback is the fear that the food thus "prepared should be overcooked. This, evidently, is the "greatest danger that can be conceived likely to occur, "and one that does undoubtedly sometimes happen."

Mr. Lyman, whose patent is quoted above, afterwards engaged in the manufacture of canned beef in Texas under his patent, and there canned a large quantity of

roast meat, which was put upon the market in Houston, Texas, and sold prior to the Wilson patent. (See deposition of John C. Bridgeman, p. 429, transcript of defendant's record "A.") He states that Clapp, Bridgman & Co., in 1870 and '71, were engaged in the manufacture of the Lyman Concentrated Roast Beef in Houston, Texas, and killed from five to ten cattle a day. He says they first cooled the meat preparatory to cooking, then roasted it in an oven sufficient for eating, then chopped it up for the purpose of canning, then pressed it into tin cans of various sizes, containing from one pound to six or more pounds; the cans were filled as full as it was possible to fill them by pressure brought to bear upon the contents in the can; after the can was filled solidly full of pressed meat it was sealed up with solder, then placed in in a bath and processed.

See Mr. A. S. Lyman's deposition, page 654 transcript of defendant's record "A." He states on page 655 that he went to Fulton, Texas, in 1869, and engaged in putting up roasted porter-house steaks; says he packed them in cans; cutting up some of the rough parts of the meat, and packing it in or around these porter-house steaks; pressed it firmly into the cans by means of presses, filling the cans entirely full of cooked meat, and then sealed up the cans and processed them. He also started the firm of Clapp, Bridgeman & Co., in Houston.

He describes the oven in which the meat was roasted; how it was packed in cans solidly, making the cans full of pressed cooked meat.

In answer to Q. 7, page 256, he says: "The cans were "as full of pressed cooked meat as we could press them." This meat was put upon the market with the labels. (See pages 862 to 866 transcript, of defendant's record "A.")

These labels are headed "Lyman's Roast Beef"; also "Lyman's Concentrated Roast Beef." The directions are "Eat it as it is, adding a little salt, if more preferable, remembering it is concentrated beef." "It is sufficiently cooked," etc. This roast beef was sent to the New York market, and sold there to quite an extent.

See deposition of Joseph A. Richardson, page 578 of transcript of defendant's record "A." He says he was engaged in packing meat at Houston, Texas, in 1869, 1870 and 1871, and made a business of preserving and packing meat by the Lyman process. In answer to Q. 9, he says: "The meat cut from the bone as soon as "killed, suspended in a receiver, the air pumped from it "to a high vacum; thus speedily cooling the meat and "removing much of the animal gases, then suspended in "an oven, roasted or baked with heated air passing "through the oven. It was then passed through the cut-"ter or grinding machine, then pressed compactly in cans. "The cans placed in boiling hot water after being sealed, "heated to boiling point, the air let out through a punc-"tured hole in the top of the can, then hermetically "sealed, and permitted to cool.

"We sometimes packed meat by the same process "without passing it through the cutting machine, generally "putting some of the cut meat into the can with that not "passed through the cutter, so as to compactly fill the "can." They had a press for pressing the meat into the cans, and packed them solidly full of cooked meat.

There are other witnesses, viz: John A. George, page 560; Charles Schierman, page 571; who worked for Clapp, Bridgeman & Co., at Houston, who corroborate the other witnesses as to the character of the Lyman

roast beef. Also William Hartung, page 539, and Albert Fluegle, page 545.

There is no rebutting testimony contradicting the defendant's testimony in reference to the Lyman roast beef.

Dr. M. Perl, of Houston, Texas, also canned cooked fresh meat and cooked corned beef at Houston, Texas. The corned beef, he says, was first cured the same as corned beef is, then boiled and cut in pieces of suitable size for canning, then it was rolled up and put in the can, which was sealed up without any gravy, and then processed.

Transcript of defendant's record "A," page 552: also on page 553, he says:

"The corned beef was thoroughly cooked before can-"ning."

Erich S. Schmidt (p. 566; q. 8 and 9), testified to seeing the roast beef and corned beef put up by Dr. Perl in Houston.

The Borden Meat Preserving Company put up fresh meat at Columbus, Texas, in 1872.

Frank Gibbie, page 163, transcript of defendant's record, "A," says:

"After our meat was cooked it was pressed into square "cans having rounded corners, as solid as we could with "a block the same shape as the can, then sealed up and "processed."

He produced one of the cans made in 1872; the same was marked "Exhibit Gibbie A."

See also deposition of H. L. Borden, page 1111, which corroborates Gibbie's testimony.

It has been the custom also for many of the canning

establishments in various parts of the country to can mince meat for pies; this meat was always boiled before canning; sometimes it was put up so as to be seasoned and ready for use when taken from the can. It was pressed into the can filling the can solidly full of this cooked meat It has long been the practice also to can sausage meat, which was prepared ready for use and then put into the cans, being pressed in with a press, so as to fill the can full, and sealed up and processed.

There have also been establishments on the coast of Maine, and at other places, that have canned large quantities of lobster; it being the custom to always cook the lobster by boiling, separate it from the bone, and press it into the can, making the can solidly full of lobster meat.

It is conceeded that it has been the practice for many years to boil lobster, separate them from the bone and can them by pressing the meat while yet warm from cooking into the can with presses. This makes a can pressed solidly full of meat that is boiled, separated from the bone and pressed in the can, making the can solidly full of meat; the can is then hermetically sealed and processed.

It is also admitted by the complainants' witnesses that pie-meat or mince-meat was prepared by boiling the meat, chopping it up and canning it, pressing it into the can while yet warm with cooking, and sealed up and processed. It was clearly proven also that it has long been the practice of the packers of Maine, and was the practice in Texas, to roast, cut up and pack meat while yet warm from cooking into the can by pressing it in solidly, making the can full of meat, then sealing it up and processing.

Complainants' witness, Samuel Bailey, states that J. W.

Jones canned in Westbrooke, Maine, beef, poultry, salmon and lobster. (See Q. 2, page 293, Complainants' Record and testimony.) That they used presses to fill the can; and also put up sausage meat. (See Q. 22, page 295.) That they filled the can solidly full. (See Cross Q. 35, page 297.)

Simeon D. Wiggins, complainants' witness, also states that W. K. Lewis and Brothers put up in 1848–49, in Portland, both roast beef, poultry, mince-meat and canned goods generally. (See Cross Q.'s 6, 7, page 374, Complainants' testimony.)

That the roast beef was tied up for roasting in a quantity to represent the can it was going into. These separate packages or bundles were hung on hooks before an open fire-place, and after being cooked on the outside the bundles were unwrapped and placed in a can.

That they boiled lobster and put them up, cooking before canning. (See Cross Q. 8.)

Temple H. Snow, also one of the complainants' witnesses, testified that Nathan Winslow, in Westbrooke, Me., in 1853, canned meats, using a press to press the meat into the can; that they also put up pie meat which was first boiled, cut up and prepared before canning; that it was put into the can with presses and sealed up. (See Cross Q. 25, p. 406.) That he also put up lobster meat which was cooked, separated from the bone, chopped up and put into cans with presses, hermetically sealed and processed. (See Cross Q. 38, page 407.)

James H. Pearson, complainants' witness, also testified that John W. Jones and Nathan Winslow, in Maine, in 1854, used presses for packing pie meat, sausage meat and certain kinds of vegetables and lobster; that the lob-

ster, pie meat and some vegetables were cooked before canning, and put into the cans with presses. (See Cross Qs. 19 and 24, pages 436 and 439.)

Charles C. Chase, another of the complainants' witnesses, states that Rumery & Burnham, in Portland, cooked some of their meat before canning; that the poultry and some of the beef was roasted, or partially roasted, before canning. (See Qs. 8 and 9, page 415, complainants' testimony.) That he went to work for the Lewis's; that they also put up roast meats; and they also canned pie meat and sausage meat; that the pie meat must have been cooked before canning. (See Cross Q. 100, page 427.) Also that the pie meat and sausage meat was pressed into the cans with presses; that this was prior to 1860. (See Cross Q. 101.)

Francis M. Sawyer, complainants' witness, testified that he worked for Rumery & Burnham in 1855 and '56; that they put up roast beef which was roasted in an oven and then canned. (See Q. 13, page 410.)

George Burnham, Jr., complainants' witness (page 247. Complainants' testimony), says that in the winter of 1852 and '53, Rumery & Burnham put up 1,000 cans of boiled meat that was boiled before canning, for Wells, Miller & Provost, of New York. That they packed the cans full of the boiled meat, putting in nothing but a little salt for seasoning. (See Q. 13, p. 249.) That the meat would come out of the can in a solid form at as high a temperature as 70°. "I do not know but higher." (See Q. 22, p. 250.) Same witness states that he worked for Geo. F. Lewis in 1845, and put up a lot of boiled beef packed in cans; that they pressed the boiled meat into the can with a lever. (See Q. 26, p. 73.) That they also packed meat that was previously cooked by roasting; that the roasted meats

were packed in cans under pressure. (See Cross Q. 122, p. 267.) That they put up the roasted meat to a large extent; that they packed meat that was steamed before packing that was exhibited at the Paris Exposition. (See Cross Q. 138, p. 270.)

John O. Rice, complainants' witness, testified that the Portland Packing Co. have had extensive canning works for many years in Maine; that they cooked some of their articles before canning; that they put up large quantities of lobster.

It is contended, on the part of the complainants, that by cooking the meat before canning it and pressing it into the can while warm, it forms a solid cake in the can, and can be removed therefrom in a solid form.

The defendants prove, by the following witnesses, that they have pressed cooked meat into the cans while warm:

Frank Gibbie, Cross Q. 97, page 178, and Cross Q 103, page 179, transcript of defendants' record "A."

George Burnham,	Cross Q.	50,	page	213
George Burnham,	" "	64,	"	216
Wm. K. Lewis,	"	18 and 19,	"	298
Wm. K. Lewis,	" "	89,	"	313
Provost,	"	115 and 116,	"	411
J. Waltemeyer,	"	19,	"	520
J. B. Schoonmaker,	" "	64,	"	686
Joseph Stevenson,	"	25,	"	710

The following witnesses testify that the cooked meat was pressed into the cans, making the cans solidly full:

Geo. F. Lewis,	Q.	46,	page	235
Geo. F. Lewis,	Cross "	72,	"	240
Chas. S. Morrill,	"	14,	"	250
Wm. K. Lewis,	"	20,	"	299

S. H. Provost,	Q.	28,	page 396
J. C. Bridgeman,	"	17,	" 431
J. Waltemeyer,	"	21,	" 520
I. Kayler,	"	34,	" 643
J. B. Schoonmaker,	"	5,	" 679
Frank Gibbie,	"	21,	" 166
Burnham,	"	51,	" 214
Joseph Farrill,	"	23 and 24,	" 467
Wm. Hartung,	"	10½	" 540
Albert Fluegle,	"	8	" 546
J. A. George,	"	13 and 14,	" 562

The following witnesses testify that the meat would come out of the can solid:

Geo. F. Lewis,	Cross Q.	40,	page 234
Frank Gibbie,	" "	73,	" 175
Geo. Burnham,	"	17,	" 208
Morrill,	"	24,	" 251
Mitchell,	"	167,	" 293
Wm. K. Lewis,	Q. 25	page	300.
Wm. K. Lewis,	Cross " 92	"	314.
G. O. Sanborn,	" 7	"	325.
Geo. D. Brown,	" 4	"	362.
Richard Hill,	" 27	"	385.
S. H. Provost,	" 51	"	399.
S. H. Provost,	" 57	"	400.
J. C. Bridgeman,	" 40	"	434.
J. Farrell,	" 52	"	471.
Wm. Hartung,	" 15	"	541.
Albert Fluegel,	" 14	"	547.
W. J. Welding,	" 5	"	691.
Timothy Turner,	" 12	"	698.
Harry R. Miller,	" 6	"	703.
Samuel Dayton,	" 5	"	760.
Mitchell,	" 15	"	271.

After the testimony was taken the complainants, by their disclaimer, above quoted, admit that Wilson was not the first to press cooked meat while warm with cooking, into a can, so as to fill the can full of cooked meat.

It is contended on the part of the defendants that he was not the first to press boiled beef into cans while yet warm with cooking.

Wells, Miller and Provost, of New York, put up meat in that way for a year or two; about when they first commenced the business of canning; and afterwards found that they could cook the meat while in the can equally well and save more of the juices of the meat, and adopted the method of cooking the meat altogether in the can.

Rumery and Barnum, and the Lewises, in Maine, canned boiled meat by pressing it into the cans while yet warm with cooking at an early day, but also changed to cooking the meat entirely in the can, putting it in the can raw.

The meat that they canned was fresh meat, and they have always continued to can fresh meat, but for many years have put it into the cans raw, and cooked it in the can instead of boiling it before canning.

Upon this point of canning boiled meat that was pressed into the can while yet warm with cooking, prior to complainant's patent, see complainant's testimony, page 255, Q. 44; that of George Burnham, Jr. This witness also states that he worked for the Lewises in 1845, and boiled meat for them, which was packed solidly in cans. (See Q. 25, page 251.)

George Lewis and W. K. Lewis both swear to having put up meat by this process in the early days of canning. (See their questions and answers above cited.)

Stephen H. Provost, of New York, swears that Wells, Miller and Provost purchased meat that was boiled before canning, and was solid in the can, of Rumery and Burnham, of Portland, in 1852.

Samuel Dayton, a dealer in canned goods in New York, also swears that he purchased these goods of Rumery & Burnham at the time they say they put up 1,000 dozen cans of warm, boiled beef.

Stephen H. Provost testifies that Wells, Miller and Provost commenced in about 1845 to can meats with gravy and without thoroughly processing; that they had a good deal of complaint in reference to the meat spoiling; and that they employed Rumery, who was afterwards of the firm of Rumery & Burnham, and he changed their method of packing. And for one or two seasons they canned boiled beef, pressing it solidly while warm into the cans, making the can solidly full of meat, which could be removed from the can in one piece and sliced. That after packing in that way one or two seasons, they found that it was practical to do all the cooking of the meat in the can—that is, they pressed the can solidly full of raw meat, sealed it up and cooked it in the can, and have practiced that method ever since. Mr. Provost is corroborated in this by several witnesses who worked for the firm at that time, viz: Isaac Kayler, Ann Stephens, Joseph Stephens, Alexander Hamilton, Samuel Calkins and J. B. Shoonmaeker.

When it was proven that cooked meat, both boiled and roasted, was put up by some of the meat canning establishments, as, for instance, W. K. Lewis & Co., at Portland, and Morrell and Burnham, at Portland, the defendants aimed to prove that there was a little stock or gravy put into the cans with the meat.

Without touching upon disputed testimony, it is sufficient to say that there were plenty of instances where the cans were packed solidly full of cooked meat, and no stock or gravy used, to establish the fact that Wilson was not first to put up cooked meat without stock or gravy, but wherever stock or gravy was used it was only in a small quantity, and the purpose of using it was two-fold; it was to return to the meat the juices or nutritious portion that the cooking excluded, and it was also to introduce into the can sufficient moisture to make a steam when the can was being processed, to exclude the air so as to make the processing more effective.

There could be no difference, so far as any invention was concerned, whether a small quantity of stock was added to the meat after it was canned, or not; it would not change the character of the meat, unless it was to improve it; and, in either instance, it would be a can of cooked meat ready for use.

It certainly would be much more like the meat which the W. J. Wilson patent describes—viz: fresh cooked meat sealed up in the can—than the meat which these defendants have canned. The defendants' meat is not fresh meat; it is first subjected to the treatment not decribed in in the Wilson patent, and then, after canning, subjected to a treatment not suggested by the Wilson patent; and the meat is not fresh meat, not sold for fresh meat, but is a corned beef.

The meat that has been so extensively packed at Poolville, Texas, for many years, and extensively sold throughout the country, and also by several large canning establishments in New York and Maine, is much more like the meat described in the Wilson patent than the corned beef put up by the defendants. These establishments took un-

cooked, fresh, raw meat, and pressed it into a can, filling a can full, and then cooked the can, retaining all of the juices of the meat in the can; it was hermetically sealed and processed, and sold the world over, for many years prior to the Wilson or Marshall patents, for fresh meat. The character of the meat would be no different from that called for in the Wilson patent; it would be cooked fresh meat: it would have more of the meat nutriment in it than when the meat was cooked before canning; the amount of gelatine that would be found in the can of fresh meat would depend largely upon how thoroughly the meat was cooked before canning; and inasmuch as it was not new to cook the meat, and not new to can meat, and not new to process it, it could be no new invention in canning boiled meat instead of the raw meat, if one was canned in precisely the same way as the other; it would be simply a matter of selection as to the kind of meat to go in the can.

Sewell v. *Jones*, 1 Otto, 171.

The last disclaimer of the complainants limits the invention to boiling the meat in water, and in order to have a valid patent for taking meat that has been boiled in water and pressing it into a can while yet warm from cooking, it must be shown that there is some new result accomplished that was not known; but the complainants have nowhere pointed out that any new result is produced by canning meat while yet warm with cooking that has been boiled in water that would not be produced by using steamed meat or roasted meat; and if there is a new or different result accomplished by using warm, boiled meat, it could not be claimed as the invention of Wm. J. Wilson, because so far as any discovery that the warm, boiled meat was essential, instead of having warm, roast meat, or warm steamed meat, there is no evidence that Mr. Wilson ever

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made it until after all the testimony was taken in this case; and this leads us to the validity of the second disclaimer of the complainants in this Wilson patent.

The court will see that it was fully established by the testimony above cited, that it was not new to press partially preserved meat in cans, filling the cans solidly full of pressed meat, at the date of the Marshall patent; nor was it new at the date of the William J. Wilson patent to press roast meat into cans, filling the cans solidly full, nor steamed meat, nor boiled lobster or pie-meat. These had all been pressed into cans, filling the cans solidly full of compressed boiled meat. They had also all been pressed into cans while warm from cooking, filling the cans solidly full. Meat had been pressed into a conical can as described in the Weismann patent. It was also stipulated by the appellants (see p. 922, transcript of defendants' record "A,") "that the complainants admit that conical "tin cans were made and used for canning alimentary sub- "stances, and sealed air-tight prior to the date of the Wil- "son patents that are the subject of controversy in the "above entitled causes." Tapering and pyramidal cans were also old at the date of complainants' patent, as fully described and shown in Peltier's French patent, 5th addition. (See p. 1008, transcript of defendants' record "A.") "Figure 4, a pyramidal box having four sides. "It can be seen by the description of the apparatus which "can produce these diverse forms, that the number of sides "to be given to the box is almost a matter of indiffer- "ence."

John A. Wilson also states in his patent that he is not limited to any particular number of sides. Peltier also says (page 1011): "If the box has rounded corners, the press-

"ing devices may embrace the form of these corners, "which they press simultaneously with the sides."

A copy of this Peltier patent is in evidence and has been produced in court as an exhibit, also samples of the can made in accordance with the description of the Peltier patent, and made and introduced in connection with the deposition of Henry L. Brevoort, p. 955, transcript of defendants' record "A." On page 960 Brevoort says: "I "understand from the specification that the number of "sides to be given to the box is a matter of indifference; "that is, it may have four, six or eight sides, as the con- "tractor desires. The specification says that the can "bodies may, if desired, have rounded corners, and the "specification directs how to construct the mechanism for "forming the bodies, so that it will produce rounded, in "contradistinction to sharp corners. The specification "says that each side of the pyramidal boxes is made in "the form of a truncated triangle. * * * The in- "ventor then proceeds to illustrate, in Figures 11, 12, 15 "and 16, two methods of attaching the heads to these "boxes. In figures 11 and 12, the margin of the body "properly flanged, is enclosed by the bent margin of the "cover, while in Figures 15 and 16 the flange margin of "the cover or bottom is enclosed by the rim of the body, "which is turned over the flange formed upon the periph- "ery of the cover or bottom of the box. These boxes are "all to be used for the purpose of containing preserved "food, as I understand from the specification; and I fur- "ther find in the specification, that these boxes when filled "may be submitted, with their contents, to heat, up to the "boiling point, and that methods are described for per- "mitting the steam to escape, and subsequently for clos- "ing the hole through which the steam found its egress "by solder."

It is also in proof that Dr. Perl, of Houston, Texas, as early as 1872, packed corned beef in cans having the offset ends, and Frank Gibbie also used cans having the offset ends; one of the cans being produced in the case as an exhibit and presented to the court. It will be seen from this evidence that the court below were justified in finding that there was no novelty in the William J. Wilson patent, nor in the John A. Wilson patent. There were not only conical and pyramidal cans prior to the date of the John A. Wilson patent, but they were made expressly for the same purpose. And the court below were perfectly justified in using the following language: "We "have, therefore, conical and pyramidal cans, and the "Gibbie and Perl cans, with flat sides but rounded cor- "ners and offset ends, known and in use long before this "inventor entered the field, and we feel compelled to "reach the conclusion that there was no novelty in the "device of a pyramidal-shaped can with rounded corners "and offset ends, as described in this claim. So that it "seems clear to us that the first claim of this patent "must be held void for want of novelty. As to the third "claim, the proof shows that Marshall packed meat solidly "in a can in 1864. He says: 'I then subject a given "quantity of the meat to pressure in a box or cylinder "until all the air is driven out and the space occupied by "the meat agrees with the size of the package it is in- "tended to fill; when the meat is in its place the box is "hermetically sealed, and in this case, retaining all its nutri- "tive qualities, the meat will remain perfect as long as "the package remains intact.'

"So Lyman, in his patent of 1870, describes his pro- "cess of packing meat solidly in cans as follows, "&c. * * * * Here we have in both cases solid

"meat, and in one case cooked meats packed in cans for "preservation. Neither of these patentees tell us the "shape of their cans, but we cannot see how, with con- "ical and pyramidal shaped cans well known in the art as "packages for the preservation of meats and other food, "and the old art of packing or compressing meat solidly "into cans, there can be any inventions which should be "protected by a patent in taking this old, well known "shaped cans and pressing into them cooked meat, so as "to form a solid mass or cake. The can was old and the "meat cake was old."

Validity of the Disclaimers.

Under section 4,917 of the Revised Statutes of 1876, a patentee or owner of a patent can file a disclaimer, but he cannot change the nature of his invention by this disclaimer, nor restrict his invention to some particular construction or process that was not specified or described in his original patent. The purpose of the disclnimer is to disclaim some particular claim in his patent that he has learned that he did not invent, and which was inserted in his claim by inadvertence or mistake, and not for the purpose of deceiving the public.

In all cases where disclaimers have been filed under the act of 1837 the disclaimer went to the point of disclaiming a certain claim or a certain device which had been embodied in the claims, which was found to be old, and the claims were left in such form as to cover some invention or device that was fully described in the patent and claimed in the remaining claims.

Tuck v. *Bramhill*, 6th Blatchford, 95.

In this case the claim was for forming a packing for piston or stuffing boxes of steam-engines out of saturated canvas, either in connection with an india rubber gore or other elastic material, or without, as therein set forth. In that case it was contended that the disclaimer was not good, because it changed the character of the claim, and the court held that the claim being alternative, covering the saturated canvas, wrapped in a certain manner, either with or without india rubber gores, made virtually two claims, and that the disclaimer, as to using that kind of packing without a rubber gore, left the other part of the claim unchanged.

Silsby v. *Foot*, 14 Howard, 220.

In this case, the patent showed and described a rod attached to a stove in such a manner that the heat of the stove would expand the rod and close the damper. He had made a claim covering the expansive and contractive power of the metallic rod by different degrees of heat, to open and close a damper which governs the admission of air into a stove. His disclaimer restricted his invention to the construction shown in this patent, where the rod was acted upon directly by the heat of the stove.

Here was an attempt in the original claim to cover bodily other constructions than was shown in his patent, and the disclaimer limiting to the construction shown was thought to be proper.

Also in *Smith* v. *Nichols*, 21 Wallace, 112, the inventor describes a certain kind of an elastic gore for gaiters. The elastic web was woven in a particular manner. His original claim did not limit the invention to the fabric woven in the particular manner shown. The disclaimer limited the invention to the particular kind of weft shown in his original patent.

These complainants file a disclaimer limiting their invention to a particular process which was not shown, described or suggested in their original patent only as it was one special form under a broad term.

Supposing that in the case of *Smith* v. *Nichols*, the original patent had simply described an elastic fabric, without showing or describing the particular weft of the elastic fabric to which the above disclaimer limited his invention, it would not have been legitimate for him by a disclaimer to limit his invention to a particular kind of weft which he did not describe or show in his original patent, although that particular kind of weft would make an elastic fabric.

In *Silsby* v. *Foot*, if it had turned out that a metallic rod, acted upon directly by the heat of the stove, to open and close the damper of the stove was old, and he had disclaimed that invention and undertaken to limit his invention by his disclaimer to a brass rod, which he did not mention in his original patent, in the manner described, nor show only in the sense that it was included under the general term of a metallic rod.

The complainants nowhere mention in the original patent the term *boiled meat*, only in the sense that boiled meat is included under the general term *cooked meat*. Now, it cannot be legitimate for them, by the disclaimer, to say that they meant in the original patent a particular kind of cooked meat, to wit: *boiled meat*. If they can say that, they can file another disclaimer, and say that they meant by the term *meat* a particular kind of meat, for instance: *beef* or *mutton*, and that the invention of William J. Wilson was boiled beef, although he did not mention in his original patent the word *beef* nor the word *boil*, nor discover that there was any new result produced, or any invention in

selecting beef as the kind of meat that he wished to can, nor in boiling it instead of cooking it in some other way. For the reason that the particular process to which the last disclaimer limits the Wilson invention was not described in the original patent, the patent as it now stands, with the disclaimer, is void.

The Effect of an Illegal or Void Disclaimer upon a Patent.

The statute says that such disclaimer shall be in writing, attested by one or more witnesses, and recorded in the patent office, and was thereafter to be considered as a part of the original specification, to the extent of the interest possessed by the claimant.

If a patent with the disclaimer annexed is considered to assume the same position relative to the original patent as a re-issue, then the disclaimer being bad, and there being no claim left not affected by the disclaimer, the patent actually becomes void, through the defective disclaimer, as much as the re-issue improperly taken would become void.

There is no more reason why the disclaimer affecting the original patent in reference to the scope of the invention, and in every other respect, just the same as a re-issue, it being only another statutory way of doing the same thing, should not make a patent void, than that an illegal re-issue should be void. The re-issue only seeks to amend and change the original specification, and the disclaimer changes the specification and claim of the patent, and becomes a part of it. If a patent is not void, and the last disclaimer in this instance is simply *ultra vires*, then the Wilson patent remains substantially as it was re-issued.

The complainants have declared that it is broader than the Wilson invention; they made this declaration when they filed the last disclaimer. If it is broader than the Wilson invention, it is void.

Non-infringement.

It has not been proved that the defendants in any of these cases have canned any fresh meat. They have not first taken meat and boiled it. The meat has all been first corned by placing it in a pickle, keeping it there from ten to twenty days. It is not meat that retains, after it is canned, its "natural juices," as required in the William J. Wilson patent. It is not claimed by the complainants that either of the defendants ever canned meat in accordance wi h the Marshall patent, and if the William J. Wilson patent is limited or restricted to taking fresh meat, as implied by the words, "the meat is *first* cooked thoroughly," and "retain all its *natural* juices," then it is not contended by the complainants that any of the defendants have infringed this patent, because there is no proof that they have any of them canned boiled fresh meat. If the John A. Wilson patent is limited to cans having rounded corners, then the St. Louis Beef Canning Co. and its joint defendants have not infringed, because the cans used by them did not have rounded corners. If the John A. Wilson patent is limited to a can having offset ends, and the means specified for fastening the top and bottom of the can to the offset ends, then neither of the defendants have infringed the John A. Wilson patent, they not having used offset ends, but fastened the tops and bottoms to the body of the can in an entirely different way. There is no controversy in reference to these points, and the finding of the

court below in reference thereto is in the following language. I first quote the language referring to the character of the meat canned:

"And although the patents show that all the meat put "up by the complainants, and which has entered so ex- "tensively into the markets of the country for sale, is "corned meat, that is not a part of the patent." Again, in reference to the cans, the court said: "The cans shown "in the proof to have been used by the St. Louis Beef "Canning Co. and by Robert D. Hunter *et al.*, are eight- "sided pyramidal-shaped cans; that is, they are made "with four narrow sides or panels and four wider ones, "while those used by the Chicago Packing & Provision "Co. are pyramidal-shaped cans with rounded corners. "But this peculiarity of construction alone, can hardly be "deemed to be subject matter of a patent." Again: "All "the defendants' cans which are shown as exhibits in the "case are made by turning the rim of the head down over "the outside of the body or shell of the can and fastening "the head in place with solder, and none of them have the "offset ends called for by the specification of this patent."

Hermetically Sealing.

It has been contended on the part of the complainants that the term "hermetically sealing" embraced the Appert process for expelling the air from a can, as well as the process of sealing the can air-tight. It can make no difference with the novelty or validity of these patents whether the Appert process is included in the process or not, only if it is not included in the process their meat evidently would not keep for any considerable length of time, because there would still remain in the can after it

was sealed up these germs of putrefaction that would shortly destroy the meat. Practically, it is one of the greatest difficulties that the packers have to contend with to can meat, even when submitted to the Appert process, so that it will not spoil after a short period, even though it is corned beef or even partially cured by salt before canning. The Appert process, which was proven in this record by the introduction of the Durand English patent, p. 883, transcript of defendants' record "A," and is also described in many of the patents above quoted, does not unite with the process described in either of the appellants' patents in a manner to give to the meat any new or special quality or property on account of such combination. One can conceive that if some one should discover that by treating meat in a certain way before canning it, to get it into a certain consistency or condition, and then by submitting it to the Appert process, it would be converted into honey instead of remaining boiled meat, the process or discovery might be new and patentable; but there is no such new result produced by the Wilson process: the various steps taken in reference to the treatment of the meat are all independent and old steps, having a certain fixed and well known result, and the result of one step in no way affects the result of the next step, or makes it different from what it always has been. The boiling the meat is precisely the same, and has the same effect upon the meat whether the meat is to be canned or not. The Appert process has the same effect upon the contents of the can in destroying the germs of putrefaction and preserving the contents, whether the contents be boiled meat or roast meat, or anything else. There is no special or peculiar result or effect of the Appert process upon boiled meat that was not previously known, or that these inventors first discovered and

first practised. If the Appert process is held to be included in the appellants' patents, it is simply submitting *boiled meat* after it is canned to the Appert process instead of meat or vegetables or any other kind of alimentary substance; it is a selection of what shall be canned. For instance, we will suppose that head cheese or hog's head prepared as it is ordinarily prepared for the table, was never canned and processed by the Appert process, and preserved in cans in that way and introduced as an article of commerce. The person simply decides to can head-cheese; he has invented nothing; he produces the same head-cheese that has already been produced; it is something that the palate is accustomed to; he treats the articles in the can just as all canners have treated their cans since 1810, to expel the air and preserve their contents; he makes no new experiment, he only decides to can head cheese instead of boiled meat. It is not possible under the decision of this court that he has invented a new and patentable process, or produced a new product.

Again, we will suppose that another man decides to can pigs' feet; he prepares pigs' feet as it has always been prepared for table use; he separates the meat from the bone as it has always been separated before he puts the pigs' feet in cans; submits the cans to the same processing for expelling the air and destroying the germs of putrefaction, that all cans are subjected to in practicing the art of preserving canned goods. Such a person has certainly produced nothing new. It is true that canned pigs' feet put up in that form may not have been placed upon the market before, but they are pigs' feet still; they are a product to which the palate is accustomed; they are prepared before canning in the usual way; they are treated

after they are in the can as all cans are treated, which are submitted to the Appert process. It follows, then, that it was quite immaterial whether the court below found that the Appert process was a part of the process of the William J. Wilson patent or not. If it should be found to be, as claimed by the appellants, one step in the process of that patent the same as if it had been originally embraced in the patent in terms, it would not make the patent a valid patent; it would not add to the patent the feature of novelty, unless William J. Wilson was the discoverer of the Appert process, and the court should find that he had discovered that the Appert process when applied to boiled meat produced an entirely different effect from what it had been known to produce before. This is not the case, and there is no pretense by any one that it is.

We submit, then, that under any view of the case, the decision of the court below was correct, and should be sustained by this honorable court.

LEWIS L. COBURN,

Of Counsel for Appellees.